Congressional Record

PROCEEDINGS AND DEBATES OF THE SEVENTY-FIRST CONGRESS
SECOND SESSION

SENATE

TUESDAY, *April 29, 1930*

(Legislative day of Monday, April 21, 1930)

The Senate met in open executive session at 12 o'clock meridian, on the expiration of the recess.

The VICE PRESIDENT. The Senate, as in legislative session, will receive a message from the House of Representatives.

MESSAGE FROM THE HOUSE

A message from the House of Representatives by Mr. Chaffee, one of its clerks, announced that the House had agreed to the amendment of the Senate to the bill (H. R. 7356) for the relief of the American Foreign Trade Corporation and Fils d'Aslan Fresco.

The message also announced that the House had passed a bill (H. R. 10175) to amend an act entitled "An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," approved June 2, 1920, as amended, in which it requested the concurrence of the Senate.

CALL OF THE ROLL

Mr. FESS. Mr. President, I suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Allen	George	La Follette	Steiwer
Ashurst	Gillett	McCulloch	Stephens
Baird	Glass	McKellar	Sullivan
Bingham	Glenn	McNary	Swanson
Black	Goldsborough	Norris	Thomas, Idaho
Blaine	Greene	Nye	Thomas, Okla.
Blease	Hale	Oddie	Townsend
Borah	Harris	Overman	Trammell
Bratton	Harrison	Patterson	Tydings
Brock	Hastings	Phipps	Vandenberg
Capper	Hatfield	Pine	Wagner
Connally	Hawes	Pittman	Walcott
Copeland	Hayden	Ransdell	Walsh, Mass.
Couzens	Hebert	Robinson, Ind.	Walsh, Mont.
Cutting	Howell	Robsion, Ky.	Waterman
Dale	Johnson	Schall	Watson
Deneen	Jones	Sheppard	Wheeler
Dill	Kean	Shipstead	
Fess	Kendrick	Smoot	
Frazier	Keyes	Steck	

Mr. SHEPPARD. I announce that the Senator from Florida [Mr. FLETCHER], the Senator from Utah [Mr. KING], and the Senator from South Carolina [Mr. SMITH] are all detained from the Senate by illness.

I also desire to announce that the Senator from Arkansas [Mr. ROBINSON] and the Senator from Pennsylvania [Mr. REED] are returning from the London Naval Conference.

Mr. NORBECK. My colleague [Mr. MCMASTER] is unavoidably absent from the city. I ask that this announcement may stand for the day.

Mr. BLACK. I desire to announce that my colleague the senior Senator from Alabama [Mr. HEFLIN] is necessarily detained in his home State on matters of public importance.

The VICE PRESIDENT. Seventy-seven Senators have answered to their names. A quorum is present.

REVISION OF THE TARIFF—CONFERENCE REPORT (S. DOC. NO. 138)

Mr. SMOOT. As in legislative session, I submit the conference report on House bill 2667, the tariff bill, and ask that it may be printed.

The VICE PRESIDENT. The report will be printed and lie on the table.

(For the text of the conference report see House proceedings of Monday, April 28, 1930, pp. 7833–7842.)

PAPER PRESENTED—THOMPSON E. WOODWARD

As in legislative session,

Mr. GOLDSBOROUGH presented a paper to accompany the bill (S. 4245) for the relief of Thompson E. Woodward, heretofore introduced by him, which was referred to the Committee on Claims.

REPORTS OF COMMITTEES

As in legislative session,

Mr. KEYES, from the Committee on Public Buildings and Grounds, to which was referred the bill (S. 3970) authorizing the Smithsonian Institution to extend the Natural History Building and authorizing an appropriation therefor, and for other purposes, reported it without amendment and submitted a report (No. 570) thereon.

Mr. THOMAS of Oklahoma, from the Committee on Finance, to which was referred the bill (H. R. 9325) to authorize the United States Veterans' Bureau to pave the road running north and south immediately east of and adjacent to Hospital No. 90, at Muskogee, Okla., and to authorize the use of $4,950 of funds appropriated for hospital purposes, and for other purposes, reported it without amendment and submitted a report (No. 571) thereon.

Mr. PHIPPS, from the Committee on Post Offices and Post Roads, to which was referred the bill (S. 2524) for the relief of J. A. Lemire, reported it with an amendment and submitted a report (No. 572) thereon.

Mr. ODDIE, from the Committee on Post Offices and Post Roads, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

A bill (S. 3178) to authorize the collection of additional postage on insufficiently or improperly addressed mail to which directory service is accorded (Rept. No. 573); and

A bill (S. 3258) to amend the act entitled "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, as amended and supplemented, and for other purposes (Rept. No. 574).

Mr. PITTMAN, from the Committee on Public Lands and Surveys, to which was referred the bill (S. 557) to authorize the disposition of certain public lands in the State of Nevada, reported it without amendment and submitted a report (No. 575) thereon.

Mr. HOWELL, from the Committee on Claims, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

A bill (H. R. 645) for the relief of Lyman Van Winkle (Rept. No. 576);

A bill (H. R. 1794) to authorize the payment of an indemnity to the owners of the British steamship *Kyleakin* for damages sustained as a result of a collision between that vessel and the U. S. S. *William O'Brien* (Rept. No. 577); and

A bill (H. R. 7069) for the relief of the heirs of Viktor Pettersson (Rept. No. 578).

Mr. BLACK, from the Committee on Claims, to which was referred the bill (H. R. 1954) for the relief of A. O. Gibbens, reported it without amendment and submitted a report (No. 579) thereon.

REPORTS OF NOMINATIONS

As in executive session,

Mr. OVERMAN, from the Committee on the Judiciary, reported the nomination of William Lee Brand, of Virginia, to be United States marshal, western district of Virginia, which was placed on the Executive Calendar.

Mr. PHIPPS, from the Committee on Post Offices and Post Roads, reported sundry post-office nominations, which were placed on the Executive Calendar.

BILLS AND JOINT RESOLUTION INTRODUCED

As in legislative session,

Bills and a joint resolution were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. GOLDSBOROUGH:

A bill (S. 4312) granting an increase of pension to Kate Merritt Ramsay; to the Committee on Pensions.

By Mr. CAPPER:

A bill (S. 4313) granting an increase of pension to Sarah A. Garver (with accompanying papers); to the Committee on Pensions.

By Mr. ROBSION of Kentucky:

A bill (S. 4314) to amend section 83 of the Judicial Code, as amended; to the Committee on the Judiciary.

By Mr. THOMAS of Oklahoma:

A bill (S. 4315) to create the office of special counsel for Indians in the Bureau of Indian Affairs to represent Indians in proceedings in the Court of Claims; to the Committee on Indian Affairs.

By Mr. PHIPPS:

A bill (S. 4316) authorizing the Postmaster General to permit railroad and electric car companies to provide mail transportation by motor vehicle in lieu of service by train; to the Committee on Post Offices and Post Roads.

By Mr. McNARY:

A joint resolution (S. J. Res. 170) authorizing an annual appropriation for the expense of establishing and maintaining United States passport bureaus at Portland, Oreg., and Los Angeles, Calif.; to the Committee on Foreign Relations.

HOUSE BILL REFERRED

As in legislative session,

The bill (H. R. 10175) to amend an act entitled "An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," approved June 2, 1920, as amended, was read twice by its title and referred to the Committee on Education and Labor.

INTERSTATE MOTORS-BUS TRANSPORTATION

Mr. BRATTON submitted five amendments intended to be proposed by him to the bill (H. R. 10288) to regulate the transportation of persons in interstate and foreign commerce by motor carriers operating on the public highways, which were ordered to lie on the table and to be printed.

AMENDMENTS TO RIVER AND HARBOR BILL

Mr. TRAMMELL (for Mr. FLETCHER) submitted seven amendments intended to be proposed by Mr. FLETCHER to the bill (H. R. 11781) authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes, which were referred to the Committee on Commerce and ordered to be printed.

INVESTIGATION RELATIVE TO RELATIONS WITH CHINA

Mr. PITTMAN submitted the following resolution (S. Res. 256), which was referred to the Committee on Foreign Relations:

Resolved, That the Committee on Foreign Relations, or any subcommittee thereof, is hereby authorized to investigate, examine, and study:

(a) Existing treaties of the United States and other governments with the Republic of China.

(b) Political and economic conditions that may affect our commerce and trade with China.

Said Committee on Foreign Relations shall report to the Senate from time to time facts and conclusions derived from such investigations, examinations, and studies as will enable the Senate to advise, as in its judgment seems fit and proper, as to the negotiation of treaties with China, or with China and other governments, looking to the denouncement, amendment, or modification of existing treaties or the execution and ratification of additional treaties.

For the purpose of this resolution the committee, or any duly authorized subcommittee thereof, is authorized to hold hearings; to sit and act at such times and places during the sessions and recesses of the Senate until the final report is submitted; to employ such clerical and other assistants; to require by subpœna or otherwise the attendance of such witnesses and the production of such books, papers, and documents; to administer such oaths; and to take such testimony and make such expenditures as it deems advisable. The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words. The expenses of the committee, which shall not exceed $20,000, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman.

EXECUTIVE MESSAGE AND APPROVALS

A message in writing was communicated to the Senate from the President of the United States by Mr. Latta, one of his secretaries, who also announced that the President had approved and signed the following acts:

On April 28, 1930:

S. 3477. An act validating certain applications for and entries of public lands, and for other purposes.

On April 29, 1930:

S. 686. An act to amend an act regulating the height of buildings in the District of Columbia, approved June 1, 1910.

LEASE OF OIL AND GAS DEPOSITS

Mr. NYE. Mr. President, the Senator from Idaho [Mr. BORAH] is entitled to the floor, but he has kindly consented to yield to me for the purpose of asking immediate consideration of Calendar 529, the bill (H. R. 8154) providing for the lease of oil and gas deposits in or under railroad and other rights of way. I ask unanimous consent for its immediate consideration. I am sure it is not going to lead to debate.

Mr. BINGHAM and Mr. McKELLAR. Let it be read.

The VICE PRESIDENT. The bill will be read.

The Chief Clerk read the bill by title.

The VICE PRESIDENT. Is there objection to the request of the Senator from North Dakota?

Mr. BLEASE. Mr. President, what is the bill?

The VICE PRESIDENT. Let it be again read.

Mr. BINGHAM. Let the bill be read.

The VICE PRESIDENT. The bill will be read for the information of the Senate.

The Chief Clerk proceeded to read the bill.

Mr. BLEASE. I object to its consideration.

The VICE PRESIDENT. Objection is heard.

MESSAGE FROM THE HOUSE—ENROLLED BILLS SIGNED

A message from the House of Representatives by Mr. Haltigan, one of its clerks, announced that the Speaker had affixed his signature to the following enrolled bills, and they were signed by the Vice President:

S. 3441. An act to effect the consolidation of the Turkey Thicket Playground, Recreation and Athletic Field; and

H. R. 7356. An act for the relief of the American Foreign Trade Corporation and Fils d'Asian Fresco.

EXECUTIVE MESSAGE REFERRED

The VICE PRESIDENT laid before the Senate a message from the President of the United States making sundry postoffice nominations, which was referred to the Committee on Post Offices and Post Roads.

NOMINATION OF JUDGE JOHN J. PARKER

The Senate in open executive session resumed the consideration of the nomination of John J. Parker, of North Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. BORAH resumed and concluded the speech begun by him yesterday, which follows entire.

Monday April 28, 1930

Mr. BORAH. Mr. President, as to the remarks of the able Senator from North Carolina bearing upon the personal character of Judge Parker, I have no controversy with him. Whatever letters I may have received in the way of criticism bearing upon Judge Parker's record in some respects do not enter into my conclusions and will have nothing to do with my vote.

I am opposed to the confirmation of Judge Parker because I think he is committed to principles and propositions to which I am very thoroughly opposed. If these were matters which related to a single lawsuit, or the determination of a principle relating alone to the rights of individuals, it would be one thing. But, as I see the propositions here involved, they are fundamental, they relate to matters of grave public concern.

The nomination of Judge Parker for the Supreme Bench of the United States has brought up for consideration a contract popularly, and not without cause and not without reason, styled the "yellow dog" contract. I doubt if there is another name among lawyers or judges so well calculated to bring up for discussion and to accentuate the issues surrounding that contract as the name of Judge Parker. He is peculiarly identified with this kind of a contract.

As we proceed with the discussion we shall see why that is so. In my opinion he has gone farther in sustaining the principles of that contract and in supporting and enforcing it through the powers of injunction than any other judge who has ever been called upon to deal with the matter. About that there will be a difference of opinion, but, after much study, that is the view I hold.

It ought to be understood in the beginning that no question here is raised with reference to the uses and abuses of the injunction in labor disputes, generally speaking. I presume that matter will be before us at no distant day for discussion, as there is now pending before the Committee on the Judiciary a bill dealing with that subject. But I am not concerned with, nor am I to discuss, the general principles relating to the use of injunctions in labor disputes.

Neither do I wish it understood that I am complaining because an injunction issued in the Red Jacket case, so called. There were ample facts in that case to justify the issuing of an injunction to restrain violence, intimidation, threats, trespass, and it must not be understood that I am complaining that the court issued an injunction restraining such acts upon the part of workingmen. If workingmen employ threats, intimidation, and violence, if they so conduct themselves as to imperil life and property, they are and should be subject to restraint the same as other people. In so far as that issue is involved, I have no defense for the labor organization and no criticism of the judge for restraining that class of acts.

We are not contending here that labor organizations can at any time employ threats, force, or violence, or intimidation, nor can they trespass upon the property of other people. They must keep within the law. That is not the issue which is involved in this controversy. As I said a moment ago, there were ample facts, so far as I read the record, to justify the injunction in regard to these matters. I am contending for nothing more than peaceful methods.

I want to say, also, Mr. President, that this is not a controversy between the employer and employee alone. It is not a controversy between the employer and union labor alone. Far, very far from it. It is a controversy which involves greater and more extended principles.

I understand perfectly the interest which the employer may have in this kind of a contract. It is an important interest, but it is an interest which can be measured at all times in dollars and cents.

I appreciate, too, the interest which the employee has in this kind of a contract. It is a vital interest and it is an interest which can not be measured at all times in dollars and cents. It sometimes means home and family and economic freedom. I appreciate also the interest which organized labor has in this contract, because if it were universally applied and carried to its logical conclusion, union labor would be at an end in the United States.

But over and above and beyond these interests, transcending them in importance, is the interest of the public, of the State, and of the National Government. Can there be anything of more concern to the State, to the Government, to the public generally, than that which is calculated to undermine, destroy, or build up, to render fit or unfit for citizenship, men and women who toil? Is not the public, the State, the National Government, interested in striking down, as contrary to public policy, as at war with the public welfare, all those overreaching contracts which rob those who work of the discretion, of the liberty of choice as to how they shall conduct themselves so long as they conduct themselves lawfully.

The question whether workingmen may associate themselves with their friends or with their fellow laborers, whether workingmen may discuss with their fellow men or cooperate with their fellow workmen as to how they shall conduct their business, is not a matter of concern to union labor alone, it is a matter of concern to the State and to the Government which is interested in maintaining and building up the character and the physical and moral well-being of its citizens. Men may contract, but they may not contract away those rights which undermine or destroy their physical and moral well-being.

Mr. President, the entire controversy, so far as the law is concerned, seems to hinge upon some isolated principle extracted from the common law. To apply the principles of the common law, the barren, naked, technical rules of the common law, which sprang up three and four hundred years ago under conditions in a business world which have passed away, and to refuse to consider the conditions in the business and the labor world as they are to-day, is to deny working men and women the right or the benefit of advance and progress. That which may have been a sound public policy, that which may have been for the public welfare in those times and under wholly different conditions can not bind another age and a wholly different business and labor world.

Old Doctor Johnson once said that the common law is the last result of human wisdom, applied to human experience, for the benefit of the public. If we take the business world as it is to-day, the labor world as it is to-day, labor organizations as they are now, and those things which labor must meet as they meet them now, we must apply also the principles of common law as they should exist now and not as they existed 300 and 400 years ago. I proceed to argue this matter not alone from the standpoint of employer and employee, not alone in the interest of or against union labor, but in the interest of a sound public policy which will inure to the benefit as citizens of those who must toil.

Mr. President, what is "yellow dog" contract? This contract, stated in a single sentence, is an agreement between the employer and the employee that the employee will not join a union while he is an employee of the employer, that he will not associate or confer with union-labor leaders or union-labor members so long as he is in the employ of the employer. There are different kinds of these contracts, but that in a nutshell is the contract. However, I want to read a line or two from some contracts to illustrate the kind of contract which employers would protect by the process of injunction. Here is one:

> That during his employment said employee will not become a member of any labor union and will have no dealings, communication, or interviews with the officers, agents, or members of any labor union in relation to membership of such employee in any labor union or in relation to the employment of such employee.

This is the twentieth century in which we are now living and in which we are discussing this contract, although if we had dug the contract out of the archives of the common law about the time that it was also a crime and conspiracy for two men to meet together and discuss their wages it would seem to be more nearly akin to that time than this.

Another paragraph in another contract:

> I agree during employment under this contract that I will work efficiently and diligently and will not participate in any strike nor unite with employees in concerted action to change hours, wages, or working conditions.

I do not know what the conditions were in those mines which are now under discussion incidentally by reason of the contract coming from them, but we do know what the conditions have been in some mines. We do know what the conditions often are where laboring men have to work. These contracts not only go to the extent of having the employees agree that they will not join the union but that they will not go on strike, and they will not seek through the cooperation of their fellow workmen to change the conditions under which they shall work. That contract upon its face is reprehensible from every standpoint of justice and humanity.

I read these that we may know the kind of contract which is here involved. Let us take an illustration, Mr. President. Suppose a workingman is out of employment. He approaches the office window of an employer and says, "I want work." The employer says to him, "I will give you work. I have the work for you to do. I will pay you the wage. But before you can go to work for me you must agree that you will not join any union while you are in my employment, and that you will not talk with members of a union or discuss the matter with them," and goes so far as I have just read and says, "You are not to engage in any effort to effectuate a change in your wages or your working conditions."

I want to turn here to the famous Hitchman case to illustrate the conditions under which these contracts are signed. It will be found in a single paragraph in that case. Reciting the facts, the court said:

> About the 1st of June a self-appointed committee of employees called upon the plaintiff's president, stated in substance that they could not remain longer on strike, because they were not receiving benefits from the union, and asked upon what terms they could return to work. They were told that they could come back, but not as members of the United Mine Workers of America; that thenceforward the mine would be run nonunion, and the company would deal with each man individually. They assented to this and returned to work on a nonunion basis.

Now, picture to yourselves the condition of hundreds and thousands of workingmen who had honestly joined a labor organization and who had gone upon strike for the purpose of increasing their wages, as they have a perfect right to do. Heaven only knows what would be the condition of the workingman if he had not gone on strikes in the past. The funds of the organization have been exhausted and they are no longer able to pay the workingmen or keep them in food or clothing or shelter. Therefore the workingman, the funds of the organization having been exhausted, goes to the employer and says, "I want work." The employer replies in effect, "You can go without work, you can go hungry, your wife and your children may go hungry, but you can not have work until you give up your right to associate with your fellow men even to advance your interests." The very conditions and circumstances under which such a contract is signed would, to my mind, be those of duress, and we shall see when we get to the Red Jacket case that that precise proposition was presented to the court.

Mr. GLASS. Mr. President, will the Senator yield?

The PRESIDING OFFICER [Mr. PATTERSON in the chair]. Does the Senator from Idaho yield to the Senator from Virginia?

Mr. BORAH. I yield.

Mr. GLASS. What was the date of the proceeding, and the opinion of the court?

Mr. BORAH. The case was decided December 10, 1917, about 10 years prior to the decision in the Red Jacket case.

Mr. GLASS. And we have sat here all of these years and permitted that to remain the law?

Mr. BORAH. No; we have tried by an act of Congress to repudiate that principle, but the Supreme Court of the United States said that our action was null and void. Mr. President, that is what makes this matter so very important. They pass upon what we do. Therefore, it is exceedingly important that we pass upon them before they decide upon all of these matters. I say this in great sincerity. We declare a national policy. They reject it. I feel I am well justified in inquiring of men on their way to the Supreme Bench something of their views on these questions.

I have been discussing what we might call the technical validity of the contract, or rather I have been calling attention to it. But the important part of these cases is that in addition to the contract they invoke the injunctive processes of the court to sustain and protect and enforce the contract, and that is the real issue in the controversy. They take this contract, signed under the conditions under which it is signed, and invoke the equity power of the court to issue an injunction that no human being may discuss with the employee whether or not it is wrong for him to break it. I repeat, we are living in the twentieth century!

Mr. President, I contend that this contract is void. That may seem presumptuous in view of the fact that a majority of the Supreme Court have held otherwise. But as a justification for what I am about to say and the way I am going to say it, it must be borne in mind that no unanimous court has ever sustained this contract. The contract has been passed upon always by a divided court. The Supreme Court of New York, as I understand the decision, repudiated the principle entirely. The Supreme Court of Kansas decided against the principle. The Supreme Court of Ohio decided 4 to 3 in favor of the contract and solely on the ground that the Federal judiciary had passed upon it. Then we come to the Supreme Court of the United States and there we find a divided court whenever this question arises. It is my opinion they have divided on the validity but there can be no doubt the court was divided on the use of the injunction to sustain the contract.

So, Mr. President, we are not discussing to-day a contract which is finally and definitely settled; it has not, fortunately, been finally incorporated in our system of jurisprudence. We are fighting over a contract which is yet to receive final approval or condemnation at the hands of the American judiciary, and that, in my opinion, is an important item here for consideration. If the question had been settled beyond peradventure, if it were entirely at rest, it would be a different question; but we are discussing a question which is in formation of a conclusion as a matter of law.

I repeat what I said a moment ago, that this contract is a void contract. What is the consideration for this contract? The employee approaches the employer for employment; the employer gives him employment and the employee gives his service. In addition to that, the employer says, "You must give up a very valuable right," a right which the Supreme Court of the United States has said is essential to the equality of the laboring man in his contentions with capital, a most valuable right—his right to cooperate and to join in a union with his fellow men.

What is the consideration for giving up that right? What is it the employer pays him for surrendering a vital right of personal liberty? It can not be the wage for which the employee renders his service, for that is the going wage for that class of labor which is being performed in the community. Then, I ask Senators what is the consideration?

There is no consideration. The employee signs the contract because he must work or go hungry. He gives up the right to associate himself with his fellow workmen because unless he does so his wife and children may go hungry.

Let me read here a paragraph from a case decided by the Supreme Court of New York. I think this is the case which the able Senator from New York [Mr. WAGNER] argued. I will not read the entire decision, of course, for it is a very long one, but quote briefly from the case of Exchange Bakery & Restaurant (Inc.) *v.* Rifkin (245 N. Y. Reports, 260):

> After beginning work each waitress signed a paper stating that it was the understanding that she was not a member of any union, pledging herself not to join one, or, if she did, to withdraw from her employment. She further promised to make no efforts to unionize the restaurant, and says that she will attempt to adjust by individual bargaining any dispute that may arise. This paper was not a contract. It was merely a promise based upon no consideration on the part of the plaintiff.

In other words, there was no consideration flowing from the employer for a very valuable right given up by the employee.

Again the court says:

> Even had it been a valid subsisting contract, however, it should be noticed that, whatever rule we may finally adopt, there is as yet no precedent in this court for the conclusion that a union may not persuade its members or others to end contracts of employment where the final intent lying behind the attempt is to extend its influence.

That is a pretty clear decision; in my opinion, it meets the issue squarely. I can not refrain from calling attention to the members of that court: Cuthbert W. Pound, Frederick E. Crane, William S. Andrews, who wrote the opinion, Irving Lehman, Henry T. Kellogg, John F. O'Brien, and Benjamin M. Cardozo, chief justice. I suppose it will be generally conceded that Judge Cardozo is one of the great jurists of this day and age, if not of the century, a jurist who commands the respect of all who know him or who read his decisions. I feel, therefore, justified in standing before this body and saying that this contract is not yet embedded in our jurisprudence; that it is not yet accepted; and that we will become a party to making it a part of our judicial system if we shall put upon the Supreme Bench those who are committed to the doctrine.

Again, Mr. President, where is the mutuality of this contract? The employee gives up his right to join a labor union. What does the employer give up? In this particular case, the Red Jacket case, there were 12 suits filed by various individuals and corporations, joined together, making 316 complainants all together. They agreed that they would have nothing to do with the union; that they would employ no union man. They were organized; they were nonunionists. Would they give up their right to exclude union men if a miner gave up his right to be a member of the union? Certainly not. They gave him nothing in return.

But we come, Mr. President, to the question that, even if there were a consideration, such a contract, in my opinion, falls under the rule that it is contrary to public policy. Senators will recall that when the barons wrested from King John the Magna Charta, it was looked upon at the time, and is often referred to as giving the people their liberty, whereas no one beneath the barons had any protection from it. The laboring man at that time—and I am referring to this because we are soon going back to the common law for our guidance—the laboring man at that time, if he met in association with his fellow laborers to discuss wages, was subject, under law, to prosecution for criminal conspiracy. Even at the time of the American Revolution, no workingman beneath the rank of what were called second-class farmers, or shopmen, or manufacturers, were protected by the principles of Magna Charta. It was not until 1821 in this country that any judge ever questioned the justice or legality of a law which made workingmen guilty of criminal conspiracy if they joined together to better their condition or secure an increase of wages. This contract belongs to that age. It is contrary to public policy because it places the workingmen in a position of inequality, in a position where they can not protect their interests against the employers. They are surrendering a vital, personal privilege, which it is not in the interest of the public to do.

The basis upon which the contract has been sustained is that of the liberty of contract. The Supreme Court has said, by a majority, that under the fifth and fourteenth amendments the right to make a contract is part of the liberty guaranteed by those amendments, and it can not be taken away. Liberty of contract, Mr. President, is curtailed and circumscribed, as everyone realizes, by the question of whether or not it is in accordance with sound public policy, whether it is in the interest of the public welfare, or whether it is against it. A railroad company can not contract to exempt itself from liability because of its negligence. Nobody would contend that a white-slave contract would be valid. There are many contracts which have been declared invalid as being against public policy, against good morals, against the welfare of the public. If the right of workingmen to be upon equality with their employers, so that they may contract in accordance with their interests, be not of public concern I can scarcely imagine anything that is. The workingmen of the Republic hold the ballot; upon their intelligence and fitness to exercise the franchise depends in large measure the success of our Government, and anything which protects the citizen and maintains his fitness as a citizen—his physical and moral welfare—can not be other than of great concern to the entire public and to the State.

The Supreme Court has said in the Erie Railroad case, Two hundred and thirty-third United States Reports:

Liberty of making contracts is subject to conditions in the interest of the public welfare and which shall prevail, principle or condition, can not be defined by any precise and universal formula. Each instance of asserted conflict must be determined by itself.

Again, the Supreme Court in One hundred and fifty-seventh United States Reports said:

While it may be conceded that, generally speaking, among the inalienable rights of the citizen is that of liberty of contract, yet such liberty is not absolute and universal. It is within the undoubted power of government to restrain some individuals from all contracts as well as all individuals from some contracts.

I might cite a multitude of cases which would establish beyond question that the right of private contract ends where the public interest and public welfare begin. It might be said in another way and equally true that liberty of contract ends where individual liberty begins. The question here is: Whether it is in the interest of the public or whether it is against the public welfare and contrary to sound public policy to permit contracts which deprive the working man and woman of the liberty of choice when it comes to determining whether they shall better serve their interests by going it alone or working it together.

Mr. President, with these preliminary observations, let us consider the Red Jacket case for a moment and then consider the cases upon which the Red Jacket case is supposed to rest.

What are the facts in the Red Jacket case? There were 12 suits instituted by various owners and operators of coal mines. The plaintiffs constituted in number 316, embracing practically all the coal companies in southern West Virginia.

These companies had agreed to operate on a nonunion basis; they were not to employ any man who was a union miner. They brought suit against the United Mine Workers of America, a labor organization, unincorporated, having a membership of 475,000. These companies in employing their men exacted a contract to the effect that the employees were not members of the union and would not join the union while in their employ. In other words, all these mines were closed nonunion shops.

A strike had been called by the union in attempting to unionize these miners, and the suit was to enjoin the union and its officers from interfering with the companies' employees by violence, threats, intimidation, and so forth, or by procuring them to breach their contracts with the plaintiffs. It is the last clause in which we are interested. We do not complain of restraint against threats or intimidation.

There is no doubt that there were violence and threats in connection with the controversy, and, in that respect, the court was perfectly justified in issuing injunctions, and temporary injunctions were obtained in all the suits. In some of these cases, or suits, it appears that settlements were obtained and the suits were withdrawn; but that is immaterial here.

The district court found, among other things, that the defendants were attempting "unlawfully, maliciously, and unreasonably to induce, incite, and cause the employees of plaintiffs in said suits, respectively, to violate their said contracts of employment with said plaintiffs."

The decree entered by the district court, which was sustained, enjoined the defendants "or by doing any other act or thing that will interfere with the right of such employees and those seeking employment to work upon such terms as to them seem proper, unmolested, and from in any manner injuring or destroying the property of the plaintiffs." It also enjoined the defendants "from inciting, inducing, or persuading the employees of the plaintiffs to break their contracts of employment with the plaintiffs."

That is the clause in which we are interested. It enjoins the defendants from inciting or persuading the employees of the plaintiffs to break their contracts of employment with the plaintiff.

What was the contract? The contract was that they would not join a union while they were in the employ of the employer, and the union was enjoined from discussing reasons with the miners or persuading them in any way that it was to their interest to join the union. So far as threats, violence, and intimidation are concerned, undoubtedly there was justification, if the facts sustained the allegation, for the issuance of the injunction; but we come to the separate and distinct proposition that the members of the union were enjoined from persuading the employees of the plaintiffs from breaching their contracts, or, in other words, from joining the union.

The defendants in their assignments of error called attention to the language of the injunction, and urged—now, notice this; this is the real issue—urged—

That the injunctive decree is too broad in that it forbids peaceful persuasion, as well as violence and intimidation.

The injunctive decree, said the defendants, was too broad, in that it enjoined peaceful persuasion, peaceful discussion, peaceful communication. I want to say to the Senate that in my judgment this is the only case that can be found where the defendants have been enjoined from peacefully persuading employees to join the union. I do not understand the Hitchman case to go that far. I do not believe there is another case where, if the facts are analyzed, it will be found that the court enjoined peaceful discussion with employees as to whether or not they should join a union; but it will be noticed that that specific issue was raised. The attorneys did not complain against the injunction in so far as it restrained intimidation or violence. They contended that it was too broad in that it did not permit peaceful discussion or persuasion against the contract.

This is the only contract that I know of in the history of the world that is too sacred for discussion. This is the only contract against which an injunction has issued denying the right to discuss the question. I say again that this is the only case, in my judgment, where the court has gone that far.

Before reading the decision, perhaps it would be well to call attention to what is known as the Hitchman case, because upon the Hitchman case this case is supposed to depend. That is to say, the court followed the Hitchman case.

The Hitchman case had a contract such as is here involved. The Hitchman case involved the use of an injunction to protect the contract. This is the distinction which I make:

In the Hitchman case the defendants employed deceit and misrepresentation; and it was because of the deceit and the misrepresentation that the court restrained them from persuading in that manner the employees from breaking their contract. In other words, the scheme in the Hitchman case was that the employees should join the union, keep it a secret from the employer, and when the time came, through secrecy, that they had enough to call a strike, they were to do so. There were no such facts in this case that I have been able to discover. I am willing to concede that the Hitchman case in its original delivery restrained the employees from breaching the contract, or restrained the union from persuading them to breach the contract; but it was only when it was accompanied, in my opinion, with deceit and misrepresentation—in other words, a scheme and a plan by which the employer was to be misled. That was restrained; and the court would restrain that if there had been no contract. Such acts, such conduct, would have been subject to restraint, if they had been injurious to the employer's property, without a contract.

Let us consider the case in Two hundred and fifty-seventh United States Reports, which construes the Hitchman case. This is the case which Judge Parker ought to, it seems to me, have followed. It was delivered before he delivered his opinion. Judge Parker proceeds upon the theory that the Hitchman case was authority for an injunction restraining the peaceful discussion of the contract. Had it not been for the Tri-City case, which I am now going to read, I could well understand how that inference could be drawn and why he might come to that conclusion. But he had the Tri-City case before him. I read some paragraphs from it, because, in my opinion, it puts the true construction upon the Hitchman case, which makes it an authority only when there is deceit and misrepresentation upon the part of the union and the employee.

In this case it is said:

Where the members of a local labor union, though not ex-employees * * *, have reason to expect reemployment at a plant where wages have been reduced, interference by them and their union by peaceable persuasion and appeal to induce a strike against the lowered wages, is not malicious or without lawful excuse—

And is not subject to restraint by injunction.

Where there is no malice, where there is no deception, where there is no deceit, where there is no fraud, peaceful persuasion is not to be restrained, seems to me to be a fair construction of this case.

Mr. McKELLAR. Mr. President, what is the date of that case?

Mr. BORAH. The date of the case is December 5, 1921—about four or five years after the Hitchman case.

I want to refer the Senate to what the Supreme Court in this case said in regard to the Hitchman case:

The principle followed in the Hitchman case can not be invoked here. There the action was by a coal-mining company of West Virginia against the officers of an international labor union and others to enjoin them from carrying out a plan to bring the employees of the complain-

ant company and all the West Virginia mining companies into the international union. * * * The plan thus projected was carried out in the case of the complainant company by the use of deception and misrepresentation with its nonunion employees by seeking to induce such employees to become members of the union contrary to the express term of their contract of employment that they would not remain in complainant's employ if union men, and after enough such employees had been secretly secured, suddenly to declare a strike against complainant and to leave it in a helpless situation in which it would have to consent to be unionized. This court held that the purpose was not lawful, and that the means were not lawful, and that the defendants were thus engaged in an unlawful conspiracy. * * * The unlawful and deceitful means used were quite enough to sustain the decision of the court without more. The statement of the purpose of the plan is sufficient to show the remoteness of the benefit.

Then they hold that the Hitchman case being confined in its effect, in their judgment, to restraint where deception and misrepresentation were involved, it was not applicable where those principles were not involved; and they were not involved in the Red Jacket case.

Further, the court said:

The Hitchman case was cited in the Duplex case, but there is nothing in the ratio decidendi of either which limits our conclusion here or which requires us to hold that the members of a local labor union and the union itself do not have sufficient interest in the wages paid to the employees of any employer in the community to justify their use of lawful and peaceable persuasion to induce those employees to refuse to accept such reduced wages and to quit their employment.

What does that case hold? That case holds that where a union has an interest such as maintaining wages, such as increasing its membership, it has a right peaceably to persuade people to join it, even if they are under a contract such as is here involved. For while there was no contract in the Tri-City case there was in the Hitchman case, which the court was construing.

I read a paragraph preceding this. This language was before the judge when he wrote the opinion in the Red Jacket case:

Is interference of a labor organization by persuasion and appeal to induce a strike against low wages under such circumstances without lawful excuse and malicious? We think not. Labor unions are recognized by the Clayton Act as legal when instituted for mutual help and lawfully carrying out their legitimate objects. They have long been thus recognized by the courts. They were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer.

When the Red Jacket case was decided, the court had before it this declaration, first, that a labor union was lawful, second, that members of it had a just right to increase its membership, and, third, that when they did so they were not acting unlawfully or maliciously, but within their rights, and could not be enjoined from peacefully persuading other employees to become members of the union.

Mr. President, the Supreme Court here held that a labor union is lawful—not only lawful but necessary—and yet the Red Jacket case holds that it is not permissible to persuade men to join a lawful organization which is necessary for their benefit or to their interest.

Mr. OVERMAN. What is the title of the case from which the Senator is reading?

Mr. BORAH. It is known as the Tri-City case.

He was dependent—

Says the court, without a labor organization—

ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer.

Mr. GLASS. Mr. President, was the Red Jacket case appealed to the Supreme Court?

Mr. BORAH. My understanding is that a writ of certiorari was sued out, but that it was refused. There is no written opinion, and therefore I do not know what entered into it.

Mr. OVERMAN. They declined the certiorari.

Mr. BORAH. It was declined.

Mr. GLASS. Does the refusal of a writ of that kind imply that the Supreme Court altogether agreed with the decision of the circuit court?

Mr. BORAH. It does not necessarily imply that it agrees with all the different questions raised by the decision. I do not know what the writ of certiorari contained—what the error was that was assigned. And I do not know upon what grounds the writ was refused.

Mr. GLENN. Mr. President, will the Senator yield?

The PRESIDING OFFICER (Mr. MCNARY in the chair). Does the Senator from Idaho yield to the Senator from Illinois?

Mr. BORAH. I do.

Mr. GLENN. In view of the question asked by the Senator from Virginia [Mr. GLASS], it seems to me important that the Senator from Idaho state, for the information of the laymen in this body, just what the action of the Supreme Court in denying the writ of certiorari would indicate, in his judgment.

Mr. BORAH. I shall undertake to do so, but as no opinion was written, the task will be fruitless.

Mr. OVERMAN. If the Senator will pardon me, the lawyers who represented the miners said they thought the Hitchman case settled the question, and they did not press the contract before the court.

Mr. BORAH. I have never quite understood the presentation of this particular question by the defense.

Mr. President, the Supreme Court could have denied the writ of certiorari, so far as this question was concerned, without passing upon it at all. When I get to the Red Jacket case, and undertake to analyze it if I can, I shall show that an interpretation of the contract in the Red Jacket case was not necessary to the full determination of the case before the court, but the court went out of its way to decide that proposition, when it could have granted full relief to the mine owners and to the property without passing upon the question at all.

I read further:

The strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore they may use all lawful propaganda to enlarge their membership, and especially among those whose labor at lower wages will injure their whole guild.

Union labor is lawful; and it may encompass a wider jurisdiction than that of its own membership, because the wage which others are paying to other employees affects their wages. Therefore any lawful persuasion, persuasion not accompanied by threat, intimidation, deceit, or misrepresentation, is lawful, says the Tri-City case, and should not be enjoined by a court of equity.

Bear in mind that when the Red Jacket case went before the circuit court of appeals, the attorney for the labor organization did not ask for a rejection of the injunction save and except as it applied to peaceable persuasion. That was the distinct assignment of error. They did not say, "You should not enjoin them from breaching the contract or persuading them from breaking the contract if it was accompanied by deceit or misrepresentation or threats or intimidation."

The attorneys for the defendant did not complain of an injunction to that extent. They said, "The injunction is too broad. You not only enjoin intimidation, threats, and violence but you enjoin peaceable persuasion." If I understand the law from reading the decision, that is precisely what the Supreme Court has decided they might do.

It is impossible to hold such persuasion and propaganda without more, to be without excuse and malicious.

In other words, there must be something more than peaceable persuasion. Is it not quite plain in the language here? Why go back, then, to the Hitchman case, 10 years ago, and follow it, instead of following the Tri-City case? It seems to me that the judges who sat upon the bench in the Red Jacket case were anxious to find some way to sustain and maintain that contract.

The principle of the unlawfulness of maliciously enticing laborers still remains and action may be maintained therefor in proper cases, but to make it applicable to labor unions, in such a case as this, seems to be unreasonable.

The elements essential to sustain actions for persuading employees to leave an employer are, first, the malice or absence of lawful excuse—

Maliciousness, deceit, and misrepresentation.

Mr. BLACK. Mr. President, will the Senator yield?

Mr. BORAH. I yield.

Mr. BLACK. As I recall it, in the Hitchman case the statement is made that any intentional procuring of the breach of a contract is unlawful, and is in law malicious. Is a reference made to that in this latter case?

Mr. BORAH. The Supreme Court says in the Tri-City case, in effect, as I understand it, that the Hitchman case should be confined to facts which show deceit and misrepresentation, and therefore the inference of malice. That is the construction they place upon it in the Tri-City case.

It is true that in the Hitchman case they had said that the interference with the contract gave rise to the inference of malice, but that matter was before the Supreme Court in the Tri-City case, and they undertook to say, as I understand the reading, that only when deceit and malice were accompanying the persuasion could a court of equity be invoked to protect the contract.

Mr. BLACK. Mr. President, may I ask the Senator whether or not the Tri-City case was after the Truax case?

Mr. BORAH. I could not give the date of the Truax case. I do not remember the date of it.

Something has been said, and rather plaintively said, to the effect that Judge Parker was bound to follow the Supreme Court of the United States; that he could not be placed in the position of overruling the Supreme Court of the United States. The inference is that he disliked to follow it, but that in obedience to the rule which lower courts always follow, I presume, of accepting the principles laid down by the Supreme Court, he felt compelled to do so.

Mr. GLASS. Mr. President, will the Senator yield?

Mr. BORAH. I yield.

Mr. GLASS. I understand the Senator to contend that he did not follow the rulings of the Supreme Court.

Mr. BORAH. I do, and I am going to cite a decision by another circuit court of appeals which was able, without incurring the charge that they were not following the Supreme Court, to come to what seems to me a wholly different conclusion.

This is the case of Gasaway against the Coal Corporation, coming up, I think, from the same prolific source of litigation. Without reading the opinion, let me read the syllabus:

> Employers may persuade a union man, provided they do not violate his right of privacy, nor invade the rights of another, to become nonunion, and union laborers may under the same conditions persuade a nonunion man to become union.
>
> * * * * * * *
>
> Preliminary injunction held erroneous, in that it deprived union laborers of the right to persuade nonunion employees of plaintiff to join the union, instead of limiting the prohibition of unionization or attempted unionization of plaintiff's men to the threatened direct and immediate interfering acts shown by the bill and affidavits.

That is the true rule. If they are employing unlawful acts, threats, intimidation, trespassing upon property in their effort to persuade them to break the contract, the court may restrain them from doing those things, but they might restrain them from doing those things whether there was any contract or not.

The thing I desire to get before the Senate is this, that the naked question of peaceful persuasion was specifically presented to the circuit court of appeals. The attorneys for the defendants stripped their contention of everything except the right to peaceably discuss this contract, and the circuit court of appeals held that they would be restrained from persuading peacefully the breach of the contract, or even discussing the contract. If that is decided in any other case I have been unable to find it.

Mr. GLENN. Mr. President, will the Senator yield?

Mr. BORAH. I yield.

Mr. GLENN. Simply as a matter of law, does the Senator from Idaho take the position, forgetting for the moment that this is a labor contract, that if the Senator from Idaho and the Senator from Michigan have a contract under which the Senator from Michigan agrees, for instance, to erect a building for the Senator from Idaho, and a third person goes peacefully to the Senator from Michigan and endeavors to persuade him to break his contract, not using force or intimidation or fraud or anything of the kind that he could not be restrained by injunction, providing the party interfering were not responsible financially so that an action of damages at law could be resorted to?

Mr. BORAH. I can understand that there might be a contract such as the Senator refers to which would be a valid contract, and which, under possible conditions, might be within the jurisdiction of a court of equity to protect, but I do say this, that if a court of equity were called upon to pass upon that question, it would not content itself with the bare, technical legality of the contract. If as a court of equity it was going to enjoin people from discussing it, it would take into consideration the interests of the party who was persuading them to violate the contract.

This case can not be decided upon the naked case stated by the Senator, for this reason, that the Supreme Court of the United States said in the Tri-City case that labor organizations were lawful, and that they had a right to increase their membership, and that they had a right to persuade people to join them, that it was in their interest to do so, and that therefore their doing so was not accompanied by malice or ill will, and therefore subject to restraint.

Mr. GLENN. I was not endeavoring to argue the proposition with the Senator from Idaho. I merely rose to elicit information and clear up the viewpoint, if I could, in my own mind. That is the only purpose I have.

Mr. ALLEN. Mr. President, will the Senator from Idaho yield?

Mr. BORAH. I yield.

Mr. ALLEN. Will the Senator from Idaho tell us what relation there is, in the application he has been discussing, of the statement of the former Chief Justice, Mr. Taft, that there is no such thing as peaceful picketing?

Mr. BORAH. Picketing is an entirely different proposition.

Mr. ALLEN. Peaceful persuasion.

Mr. BORAH. He did not say that, as I recall.

Mr. ALLEN. It is the same general principle.

Mr. BORAH. I beg the Senator's pardon. Chief Justice Taft never said there was no such thing as peaceful picketing or persuasion. What he did say was that where there was a large gathering of men near the property or upon the property of the employer, and perhaps 50 or 100 or 200 union men accompanying the man who was making the argument or picketing, it was calculated to intimidate the employees of the company, and that that was not peaceful picketing. But he did say in the same case that if the persuasion was accompanied by such peaceful means as not to indicate intimidation, annoyance, dogging it was lawful.

Mr. GLASS. Mr. President, the Senator has made a very impressive argument against the public policy of the sort of contract which he has been discussing. May I ask whether the Supreme Court has ever decided the invalidity of such a contract?

Mr. BORAH. As this contract?

Mr. GLASS. Yes.

Mr. BORAH. The Supreme Court by a majority opinion has upheld the validity of this contract.

Mr. BLACK. Mr. President, as I recall it, in the only case bearing on the subject with which I am familiar the majority upheld the contract, and the minority did not hold the contract invalid, but based their opinion upon other grounds, as I recall, in the case in which Justice Brandeis and the other judges dissented.

Mr. BORAH. Let me answer the Senator from Virginia, and then I will answer the Senator from Alabama.

The Senator from Virginia asked me if the Supreme Court had ever upheld this contract. In my opinion, the Hitchman case and the Coppage case, known as the Kansas case, must be cited as cases of a majority of the court upholding the contract; but there are two propositions in this contract.

Mr. GLASS. I understood that they upheld the Hitchman contract on the ground that deception and misrepresentation were practiced.

Mr. BORAH. No. I was going to say we ought to keep in mind two propositions—first, the technical validity of the contract, and, second, the conditions under which the court will restrain any discussion of peaceful persuasion to breach the contract. In the Hitchman case the majority of the court undoubtedly upheld technically the validity of the contract, but they refused to restrain a discussion of it, as I contend, unless that discussion was accompanied by deceit and misrepresentation. What I am complaining of here is not that the circuit court of appeals recognized the contract as valid, but that they went further and refused to permit it to be discussed although it was peacefully discussed and peacefully reasoned upon. The error was in the injunction decree and not in the assumption that the contract was valid. They did not really hold the contract was valid, but they assumed that it was.

(At this point Mr. BORAH yielded the floor for the day.)

Tuesday, April 29, 1930

Mr. BORAH. Mr. President, I feel like apologizing to the Senate for further trespassing upon its time, but the record in this case is of such length that it is very difficult to abbreviate what ought to be said in justice to the facts and the law. I was discussing last evening the Hitchman case and the Tri-City case upon which the court assumed to rule in the Red Jacket case. There is one feature of the Hitchman case and the Tri-City case to which I desire to call attention as it seems to me very significant, significant of the fact that the Tri-City case modified to a marked extent the supposed holding in the Hitchman case.

In the Hitchman case Justice Brandeis, Justice Holmes, and Justice Clarke dissented. I read a single paragraph from Justice Brandeis asserting vigorous dissent. He said:

As persuasion, considered merely as a means, is clearly legal, defendants were within their rights if, and only if, their interference with the relation of plaintiff to its employees was for justifiable cause. The purpose of interfering was confessedly in order to strengthen the union, in the belief that thereby the condition of the workmen engaged in mining would be improved; the bargaining power of the individual workingman was to be strengthened by collective bargaining; and collective bargaining was to be insured by obtaining the union agreement. It should not, at this day, be doubted that to induce workingmen to leave or not to enter an employment in order to advance such a purpose is justifiable when workmen are not bound by contract to remain in such employment.

Mr. President, in the Hitchman case there was a contract. The question was under what circumstances the union could solicit the employees of the employer to depart from the employer and join the union.

I understand the Hitchman case to have held that, notwithstanding the fact that the union member was soliciting for the purpose of increasing the membership of the union, that was not justifiable. Justice Brandeis holds that there are conditions under which it is justifiable, and in the Tri-City case those conditions are set forth, to wit, whenever the union members undertake to persuade the employee to leave his employment for the purpose of joining the union, without deceit or misrepresentation, without threats or intimidation, but solely for the purpose of bringing a larger membership, thereby increasing the strength of the union, that it is justifiable. In the Tri-City case, Justice Brandeis and Justice Holmes agreed with the majority opinion.

I take it, therefore, Mr. President, that, in view of the dissenting opinion in the Hitchman case and in view of the concurrence in the Tri-City case by Justice Brandeis and Justice Holmes, there must have been a marked modification of the holding of the court in order to enable them to consent to join in the majority opinion. I think that ought to be taken into consideration when we are undertaking to arrive at what the real holding was in the Hitchman case and in the Tri-City case.

I am very frank to admit that if the Hitchman case had stood alone, without the construction placed upon it by the Tri-City case, such inference as was made by the Fourth Circuit Court of Appeals might have been justified, but 10 years elapsed between the holding in the Hitchman case and the decision in the Red Jacket case, and in those 10 years a vast amount of criticism from lawyer and layman alike had been leveled at the Hitchman case. It seems perfectly clear to me that, upon reconsideration of the principle involved in the Hitchman case, the court clearly intended to hold that labor unions were lawful, that union members had a right to solicit membership, that if that solicitation were not accompanied by threats, intimidation, or deceit it was within their right, and that they could not be restrained from such solicitation.

Mr. President, let us read the Red Jacket case briefly and analyze it. We have given some attention to the two cases upon which it is supposed to rest. The Red Jacket case is found in Eighteenth Federal Reporter, of the second series, at page 839. There is a vast amount of the case which does not concern us here. There is the question of jurisdiction, a question which was argued at greater length than any other question—that is to say, whether or not the mining of coal, although it was shipped in interstate commerce, gave jurisdiction to a Federal court to restrain the parties from interfering with interstate commerce, the contention being that it was a mere mining of coal, and, therefore, the Federal court had no jurisdiction. That question was argued at length. Also the question was involved as to whether the proper parties had been joined in the suit. That received considerable attention at the hands of the court, but it is of no concern to us here. The court then comes to this question:

With respect to the second paragraph, complaint is made that it restrains defendants "from inciting, inducing, or persuading employees of the plaintiffs to break their contract of employment with the plaintiffs."

I ask Senators of what did the breaking of the contract consist? What was it the court was restraining? Under the contract the employees had a perfect right to leave or quit whenever they desired to do so; they had a right to join the union whenever they desired to do so. The only thing that they might not do was to join the union while they were still in the employ of the plaintiffs in the case. However, the court restrained them from persuading the breaching of the contract.

It is very difficult for me to understand what the breach was against which the court was restraining them, in view of the fact that I find in the record no evidence of deceit, misrepresentation, intimidation, or threat accompanying the persuasion; but the effect of the holding of the court was to say to the employees, to the union men, "You can not discuss with each other the advisability of joining the union"; and, as a matter of fact, that is the effect it had in the case. But assuming there were threats, the defendants did not complain of the injunction restraining such acts but asked the court to modify it and permit peaceful persuasion.

"From inciting, inducing, or persuading the employees of the plaintiffs to break their contract of employment with the plaintiffs." This language—

Says the court—

is certainly not so broad as that of the decree approved by the Supreme Court in the Hitchman Coal & Coke Co. *v.* Mitchell (245 U. S. 229).

Mr. President, the court in this citation wholly ignores the Tri-City case, which had been decided in the meantime, and which, if I can understand language, had wholly modified the Hitchman case and had held definitely that persuasion, if it was not accompanied by unlawful means, such as deception and threats, was permissible.

Bear in mind that the attorneys for the defendants had specifically said to the court, "We complain that your decree is too broad, not that you should not restrain intimidation and threats but that you should not restrain peaceful persuasion." So the specific question was raised and presented to the court as to whether peaceful persuasion was permissible. In the Tri-City case the court had undoubtedly held that persuasion, unaccompanied by malice, indicated by some acts unlawful in themselves, was permissible. What I do not understand from the court is why the Tri-City case was ignored in this instance. It would be a reflection upon Judge Parker's ability as a judge should I say that he could not see any difference between the Tri-City case and the Hitchman case, and it would be an intimation that he was seeking a prior case upon which to hinge the validity of a contract and ignoring a subsequent case if I should take the other view. It is a matter of inference which each Senator must draw for himself.

Mr. OVERMAN. Mr. President, may I ask the Senator to yield to me there?

The VICE PRESIDENT. Does the Senator from Idaho yield to the Senator from North Carolina?

Mr. BORAH. I yield.

Mr. OVERMAN. In this case there were threats, there was force, there was conspiracy on the part of large numbers to induce the breaking of the contract.

Mr. BORAH. What was the last statement of the Senator?

Mr. OVERMAN. That there was a conspiracy on the part of large numbers to persuade the employees to break their contract.

Mr. BORAH. Oh, no. There were threats, there was force, there was violence, there was fighting, all of which the court had a perfect right to restrain. Anything in the nature of unlawful conduct the court undoubtedly had a right to restrain; but what the defendants' attorneys said was, "You go too far; you not only restrain those acts which are unlawful, but you restrain peaceful persuasion." That is the specific question which the attorneys for the defense raised. May I recur to the language of the assignment of error? I quote from the statement of facts found in the decision itself.

The defendants in their assignments of error call attention to the language of the injunction and urge "that the injunctive decree is too broad, in that it forbids peaceful persuasion as well as violence and intimidation."

So there is no possible chance, Mr. President, to misunderstand the fact that the court had before it the specific proposition, stripped of all extraneous matters, that it was peaceful persuasion upon which they passed. I ask the able lawyers who sit about me where else in the decisions upon this question can they find that the court ever enjoined peaceful persuasion with reference to the breaching of a contract, if it was unaccompanied by unlawful acts, such as deceit, intimidation, and threats?

Mr. OVERMAN. Mr. President——

The VICE PRESIDENT. Does the Senator from Idaho yield further to the Senator from North Carolina?

Mr. BORAH. I yield.

Mr. OVERMAN. Was not that the reason for Judge Brandeis's dissenting opinion in the Hitchman case, namely, as he said, that there was no evidence of force or conspiracy or a menace to the rights of anyone?

Mr. BORAH. I do not remember the language of Judge Brandeis in regard to that, but I do remember very distinctly that the facts disclosed threats, intimidation, and trespass.

Mr. OVERMAN. In the Hitchman case?

Mr. BORAH. Yes.

Mr. OVERMAN. As I understand, the dissenting opinion of Judge Brandeis was based on the fact that there was "peaceful persuasion" through force.

Mr. BORAH. It might have been that Judge Brandeis contended that threats or intimidation did not accompany the persuasion, and, if he did, that is the precise matter which was decided in the Tri-City case, and, perhaps, that is the reason he joined with the court in the Tri-City case and refused to join with the majority in the other case. Of course, if there were threats, if there was intimidation, the court would have a right to restrain such acts, even if there were no contract.

This language is certainly not so broad as that of the decree approved by the Supreme Court in Hitchman Coal & Coke Co. *v.* Mitchell * * * which also enjoined interference with the contract by means of peaceful persuasion.

Then, quoting further from the Red Jacket case:

The doctrine of that case has been approved by the Supreme Court in the later cases of American Steel Foundries *v.* Tri-City Central Trades Council * * *.

I submit, Mr. President, it would compromise the ability of Judge Parker as a judge if he thought that the Tri-City case sustained and approved the Hitchman case to the extent laid down in the Red Jacket case. The very object and purpose of the Tri-City case was to modify the holding in the Hitchman case.

May I, at the risk of trespassing upon the patience of the Senate, read from the Tri-City case again in connection with this statement? After the court had held that labor unions were lawful, that they were not only lawful but necessary in order to give the working men equality, they said in regard to the Hitchman case, speaking of it:

The plan thus projected was carried out in the case of the complainant company by the use of deception and misrepresentation with its nonunion employees by seeking to induce such employees to become members of the union contrary to the express terms of the contract of the employee that they would remain in the complainant's employ if union men, and after enough such employees had been secretly secured, suddenly to declare a strike against complainant and to leave it in a helpless situation in which it would have to consent to be unionized.

The court held that the purpose was not lawful—that is, the purpose was, by deception, to unionize enough men within the employ of the company secretly so that at some early morning hour they might declare a strike, and the company would be at their mercy.

That the defendants were thus engaged in an unlawful conspiracy which should be enjoined. The unlawful and deceitful means used were quite enough to sustain the decision of the court without more.

If I understand the language of the court, it meant to say that anything in the Hitchman case outside of holding against persuasion when accompanied by deceit and misrepresentation was obiter dicta, and that the court should not be considered as sustaining the contention that any other width or breadth of the decision should be accepted.

The statement of the purpose of the plan is sufficient to show the remoteness of the benefit ultimately to be derived by the members of the international union.

Then they say, further speaking of this case:

The Hitchman case was cited in the Duplex case, but there is nothing in the ratio decidendi of either which limits our conclusion here—

Mind you, "nothing in either case which limits our conclusion here." What is our conclusion?—

or which requires us to hold that the members of a local labor union and the union itself do not have sufficient interest in the wages paid to the employees of any employer in the community to justify their use of lawful and peaceable persuasion to induce those employees to refuse to accept such reduced wages and to quit their employment. For this reason, we think that the restraint from persuasion included within the injunction of the district court was improper.

It seems to me that the Tri-City case would not only have justified but it was ample authority from the Supreme Court of the United States, in its last statement, for the Circuit Court of Appeals for the Fourth Circuit to have said that people should not be permitted, through deception or misrepresentation, or threats, or intimidation, to cause employees to breach their contract. They would have been wholly within the decision in the Tri-City case. There would have been no danger of breaching the holding of the Supreme Court or coming in conflict with the holding of the Supreme Court.

The court quotes at length from the Hitchman case; not a quotation, not a line from the Tri-City case. Shall we infer that the court did not know the effect of the Tri-City case, or shall we infer that they preferred the Hitchman case in order to sustain this outrageous and unconscionable contract? Either inference is unsatisfactory in passing upon the qualifications of a man for the Supreme Bench.

Mr. President, I said yesterday afternoon that we were engaged in a controversy yet unsettled—that is to say, whether this kind of a contract should become permanently embodied in our jurisprudence and accepted by the people of this country as a binding contract. My own opinion is that it will pass out of existence, just as the old doctrine that the action of two men in consulting together with reference to wages was a conspiracy has passed out of existence. In my opinion, it really as a matter of reason passed out 400 years ago, when those conditions which gave rise to that situation existed. It passed out when the new condition of affairs came about. When the laboring man had to contend with immense capital, that doctrine was no longer applicable or pertinent.

As an illustration of the fact that we are in the midst of the controversy, I have in my hand a transcript of a case now in the Supreme Court of the United States. I think the case is to be argued to-day. Therefore it is very pertinent that I say no more about it than call attention to the issue. In that case, if I get the facts correctly from a hasty reading, a southern railroad undertook to demand of its employees that they join a union which the railroad had organized and that they refrain from joining any other union; that they should agree not to join any union except a union which had been instituted, initiated, and organized by the railroad company. The employees of the railroad company brought a suit to restrain the railroad company from making any such demands or interfering in any way with the employees having their own organization. The lower court issued the injunction against the railroad company. The matter went to the circuit court of appeals. The circuit court of appeals sustained the lower court, and the case is now in the Supreme Court for determination. If we are sufficiently rapid and the decision should be adverse to what it ought to be, it is possible that Judge Parker would be permitted to sit in that case and help determine it before it is finally decided.

Mr. President, as a résumé of what I have said, let me ask how did the law stand when the Red Jacket case came on for consideration?

First, the Supreme Court in the Hitchman case by a divided court had sustained an injunction restraining the defendants from persuading employees to disregard their contract; but in that case, as construed by the court later, it was only when the persuasion was accompanied by deception and misrepresentation—such deception and misrepresentation as would lead employees to join the union without notifying their employer—in other words, dishonesty, deception, with a view at the proper time of carrying on a strike.

Secondly, the Hitchman case had been explained and limited in its meaning in the Tri-City case. In the latter case, Justices Holmes and Brandeis agreed with the majority, but Justice Clarke dissented. He filed no opinion, but simply recorded his dissent. In other words, the Hitchman case was not to be understood as holding that persuasion could be enjoined unless it was accompanied by some unlawful act, such as deception and misrepresentation. It was clearly intended by the Tri-City case to place a construction upon the Hitchman case, which would limit it in its purport.

Third, under the Tri-City case it was held that labor unions were lawful, that they were necessary; that a single employee could not protect himself against his employer, and that a union is necessary to place the employees upon an equality with the employer.

Fourth, under the Tri-City case it was held that labor unions have a right to use all lawful propaganda to enlarge their membership, and that their acts in this respect become subject to judicial restraint only when they are accompanied by such unlawful acts as deception and misrepresentation.

Fifth, persuasion and propaganda for the purpose of enlarging the membership of a union can never be regarded as malicious or unlawful in and of itself. The persuasion to breach that kind of a contract can never be regarded in and of itself as unlawful. Why? Because back of it is a legal and lawful purpose to increase the membership of a union, which union is necessary to the equality of the workingman.

Sixth, that in order that persuasion may be restrained or come under judicial cognizance it must be accompanied by something more than peaceful persuasion. As an illustration, the court holds that communications and discussion looking to the influence of another's action can not be regarded as in violation of any other man's right. If it is accompanied, however, by annoyance, by persistent, dogging interference with work, such as is

calculated to induce intimidation or disturbance of the work, it may be restrained, which things could be restrained even if there were no contract.

Now, what did the court hold in the Red Jacket case as a finality?

I contend that the Red Jacket case went further than any other case which has been decided by the court. I contend that the Red Jacket decision ignored or disregarded the construction and limitation placed upon the Hitchman case and the Tri-City case. I contend that the opinion chose to follow the Hitchman case rather than the latter case, the Tri-City case; that the Red Jacket case is the only case which has enjoined the use of persuasion or reason against the "yellow dog" contract where such persuasion or reason is not accompanied by unlawful acts of themselves; that in the Red Jacket case there was no charge or proof of deception or misrepresentation, as in the Hitchman case.

I further contend that the action of the court in sustaining and protecting the "yellow dog" contract was not necessary to a full and complete protection of the rights and interests and property of the plaintiffs. The injunction restraining intimidation, threats, misrepresentation, violence, or trespass was ample and sufficient to give full protection to the property and property rights and to the life of employees.

Mr. HASTINGS. Mr. President——

The VICE PRESIDENT. Does the Senator from Idaho yield to the Senator from Delaware?

Mr. BORAH. I yield.

Mr. HASTINGS. Does the Senator contend that if the purpose was unlawful, they could not be restrained from using peaceful means to break these contracts? If the purpose of the union was unlawful, could they or not be restrained from peaceful persuasion?

Mr. BORAH. If the Senator will accept my definition of "unlawful," I should say yes, they could be restrained; but I do not agree with the doctrine sometimes thrown out that it is unlawful for a union to increase its membership and to use persuasion for increasing its membership, although the union has in contemplation a strike. A strike is lawful. A union has a right to strike; and we should be in a pitiable condition in this country to-day if workingmen did not have that right and had not had. So it depends on what the Senator means by "unlawful." If he means that they are accompanying their persuasion by threats and violence and destruction of property, then I say they can be restrained, but they could be restrained if there were not contract. What I am trying to get rid of, and what I wish to rivet in the attention of the Senate, is this little contract by which the company makes them agree not to join a union.

Mr. HASTINGS. Mr. President, if the Senator will permit me, I should like to ask him one additional question which I desire to have him answer before he sits down.

When this matter was brought to the attention of the Supreme Court from the circuit court of appeals, this was one of the questions, the first one being that of jurisdiction:

> Did the district court of the United States and the circuit court of appeals err in enjoining and restraining officers and members of the United Mine Workers of America from persuading the employees of respondent to become members of the union, and cease their labor in the production of coal?

That was the question. In the brief filed, this was the contention:

> We earnestly submit that the circuit court of appeals has misconstrued the opinion of this court in both the Hitchman case and the American Foundries case—

Which is the Tri-City case—

> that in the Hitchman case the decree of injunction against persuasion was predicated on fraud and deceit practiced in persuading an employee, notwithstanding his contract, to secretly join the union while remaining in the employ of the company, for the purpose of thus organizing its labor forces.

That was the question submitted to the Supreme Court, and that was a part of the brief filed; and the Supreme Court refused the certiorari. Then did or not the Supreme Court sustain Judge Parker in his decision?

Mr. BORAH. It did not necessarily. I find set out on page 536 of the reports of the Supreme Court of the United States, volume 275, reference to the following cases: No. 325, Lewis and others; No. 326, International Organization and others, the Red Jacket case; No. 327; No. 328; No. 329; No. 330; No. 331; No. 332; No. 333; No. 334; No. 335; No. 336. Then follows this statement:

> Petition for writs of certiorari to the Circuit Court of Appeals for the Fourth Circuit denied.

I do not know upon what ground the court refused the writs of certiorari.

Mr. HASTINGS. I copied this from the record this morning.

Mr. BORAH. The Senator was copying from the brief?

Mr. HASTINGS. Yes.

Mr. BORAH. I copied from the decision of the Supreme Court of the United States, and I say we have no means of knowing upon what ground the court refused the writs of certiorari.

Mr. HASTINGS. There were two questions; there were but two questions in the brief. One was jurisdiction, and the other was this question which I have just read to the Senator.

Mr. BORAH. There are reasons for refusing a writ of certiorari aside from the merits of a controversy, and I do not know whether it was a question of form, or some question of proceeding, whether the error was raised directly, or whether the court thought it was not of sufficient merit. I have no means of knowing.

It is possible that the Supreme Court might have come to that conclusion, it might have taken the view of the Hitchman case again and returned to it, I do not know; but it does not seem to me reasonable.

Mr. President, I want to ask the Senate this question: Suppose the court in the fourth circuit had modified the decree in accordance with the contention of the attorneys for the defense. Suppose the court had modified that decree so that persuasion should only be restrained when accompanied by what the court had said in the Tri-City case were unlawful acts How could it possibly have been error before the Supreme Court of the United States?

What error could possibly have been assigned for the court modifying the decree in accordance with the contention that only unlawful acts, such as intimidation or deceit, should be significant of the right of the plaintiffs to have a decree? It could not have been error under any circumstances.

I contend that the circuit court of appeals went much farther than either the Hitchman case or the Tri-City case, but if the court below had sustained those cases and had been in perfect accord with those cases, I would not myself vote to put a man upon the Supreme Court who was committed to the doctrine, regardless of how he became committed. I think this is so fundamental, so righteous in and of itself that I could not get my consent to put upon the Supreme Court a man who has already declared his position upon the question. The court is divided; the controversy is there again; and if the Senate decides that Mr. Parker should be confirmed, it is in moral effect a decision of the Senate in favor of the "yellow dog" contract.

Mr. President, much has been said in the last few weeks about the duty of the Senate when a nominee comes before it for the Supreme Bench of the United States. The doctrine has been put forth that all we have to do is to read the name and vote our approval, that our function here is to accept without inquiry or sincere investigation the appointment of the President. I am one of those who believe that nowhere in the whole scheme of government did those who gave us the Constitution, construct with such brilliancy and boldness as in the creation of the Supreme Court of the United States. In many respects this part of their work was peculiarly original. Here was a task which called for the pioneer in statecraft, which called for the highest order of constructive statesmanship.

They conferred jurisdiction over controversies between sovereign States. They made this court the final interpreter of the great charter under which we live as a Nation. No right, no privilege is guaranteed by the National Government to citizens but may some time come under the supervision of this tribunal. In the wide sweep of its powers granted, it has found authority for holding void an act of Congress itself, the Congress which represents the people. Nowhere in all the history of jurisprudence is there a tribunal approaching our Supreme Court in dignity and power.

Finally, they determined to give to those who should have a place upon that bench a life tenure. With all these vast powers, they were to sit for life. They intended to remove them as far as practicable, after they reached the court, from the fears or the favors of politics.

I am not complaining of anything which the fathers did; I am not urging any change. I want the Supreme Court, as an institution, to stand as the fathers created it—the proudest monument to their genius.

Mr. President, in preserving that court in all its usefulness and power, there devolves upon this body a high and an almost sacred obligation. Our part is not merely a perfunctory part. The President selects, but he only selects. No man can sit upon that tribunal without the approval of this body. Ours is the more important part. It is the greater obligation. No one can review our action. From our judgment there is no appeal. It is a stupendous obligation, and to perform it perfunctorily or

without the sincerest investigation would be a betrayal upon the part of the Senate of the highest trust which has been imposed upon it.

In passing upon the fitness of nominees to that court we are bound to take into consideration everything which goes to make up a great judge—his character and standing as a man, his scholarship, his learning in the law, and his statesmanship.

Upon some judicial tribunals it is enough, perhaps, that there be men of integrity and of great learning in the law, but upon this tribunal something more is needed, something more is called for, here the widest and broadest and deepest questions of government and governmental policies are involved.

And, finally, we must weigh his conception of human rights, for we all know that the law takes on something of the heart and soul, as well as the intellect, of those who construe it.

In the face of such an obligation, such responsibility, we dare not shirk any part of our duty. We may differ here, sincerely differ, as to whether this or that nominee should be confirmed, but we can not differ upon the proposition that we are honestly to record our convictions as to his fitness.

The political atmosphere in these days is almost feverish with fright over the breakdown, as it is called, the failure of representative government. It would seem to some that we have approached the time when we doubt the efficiency and the wisdom of free institutions. We hear here in our own country the suggestion of something different. The fault is not in the Government, the fault is not in the form of our institutions; the fault, if any may arise, will be in the failure to find men with the intelligence to appreciate the obligations imposed and the courage to execute the powers of the Government. Those who say to us here that we are to approve pro forma are teaching those doctrines of cowardice and betrayal, the very things which rot out and destroy government. It is not the performance of duty, but the shirking of duty which destroys free institutions.

Mr. OVERMAN. Mr. President, on yesterday the distinguished junior Senator from Alabama [Mr. BLACK], reading from a newspaper account, asked me a certain question which I could not answer because I had never heard the charge before, and knew nothing about it. This morning I have a telegram from Judge Parker himself, which I ask the clerk to read for the benefit of the Senate.

The VICE PRESIDENT. Without objection, the clerk will read.

The legislative clerk read as follows:

RICHMOND, VA., *April 29, 1930.*

Hon. LEE S. OVERMAN.

DEAR SENATOR OVERMAN: I understand it has been stated that in the Harness case I prosecuted defendants while having in my possession documents which established their innocence. This statement is absolutely and unqualifiedly false. The Harness case involved a great mass of documentary evidence; hundreds of documents were introduced by the Government and hundreds by the defense. The case was prepared by Mr. Marion C. Early, of St. Louis, a lawyer of the highest character and standing, and I was assigned to assist him in the prosecution. I found that a large number of the witnesses on whom we relied were hostile, and a number of documents were produced by them in court that we had never heard of and that Mr. Early had never been able to find in his search of the Government files. I know of no document that established the innocence of defendants, but I do know that no document tending to establish their innocence was withheld or suppressed by me. Judge Baker, in whose court the case originated, and Judge Groner, before whom it was tried, have filed letters as to my conduct of the case, and so has Mr. Early, who has also denied the false charge. I can only say that any statement that at any time anywhere, under any circumstances, I have ever prosecuted a man while having in my possession proof of his innocence is unqualifiedly false.

JOHN J. PARKER.

Mr. OVERMAN. Now, I send to the desk a letter from the judge who tried the so-called Harness case, and ask to have it read.

The VICE PRESIDENT. Without objection, the clerk will read.

The legislative clerk read as follows:

UNITED STATES DISTRICT COURT,
Richmond, Va., April 26, 1930.

Hon. GEORGE W. NORRIS,
Chairman Judiciary Committee, United States Senate,
Washington, D. C.

MY DEAR SENATOR NORRIS: There have been a great many things said and printed in newspapers opposed to Judge Parker, intended doubtless to influence adversely the consideration by the Senate of his appointment to the Supreme Court. These have been properly answered and I have no present concern with them. I feel, however, in common justice to Judge Parker that I should notice an editorial appearing yesterday afternoon in a Washington newspaper called the News, in which his professional conduct is criticized in a criminal case, known as the Harness case, in which I presided. There was nothing in Judge Parker's conduct in that case which was properly the subject of adverse criticism, nor was there any by me at any time during the trial. His part in the conduct of the case commended itself to me as conforming in all respects to the highest standards of the profession, and I therefore pronounce as wholly unjust and without warrant any and every implication to the contrary.

With respect, I am, yours sincerely,

D. LAWRENCE GRONER.

Mr. OVERMAN. I send to the desk a telegram from the leading attorney in that case, Mr. Early, of St. Louis, I understand one of the greatest lawyers out there. I ask to have that read.

The VICE PRESIDENT. Without objection, the clerk will read.

The legislative clerk read as follows:

ST. LOUIS, MO., *April 28, 1930.*

Hon. LEE S. OVERMAN,
United States Senator, Senate Office Building:

In case of United States *v.* Byron et al., known as the Harness case, I was chief counsel, and John J. Parker acted as associate counsel in presentation of case in United States District Court, Northern District, West Virginia. Mr. Parker's work was most thorough and highly honorable in every particular from beginning to end. To-day for the first time it has been reported to me that Mr. Parker had suppressed or failed to offer material evidence. I state emphatically such report or any other statement imputing to Mr. Parker any lack of diligence or unprofessional conduct is utterly false and without foundation.

MARION C. EARLY.

Mr. OVERMAN. I now send forward a letter from a very eminent Republican of Richmond, Va., known to every Republican, Mr. Henry W. Anderson, and ask that it be read.

The VICE PRESIDENT. Without objection, the letter will be read.

The legislative clerk read as follows:

RICHMOND, VA., *April 28, 1930.*

Hon. LEE S. OVERMAN,
United States Senate, Washington, D. C.

DEAR SENATOR OVERMAN: I understand that in connection with the opposition to the confirmation of Judge John J. Parker as an associate justice of the Supreme Court some question has been raised as to his handling of the suit of the United States *v.* The Harness Co. in 1923 or 1924. At that time, at the request of the President and the Attorney General, I undertook a survey of cases arising out of war transactions of the Ordnance Department, of which this case was one. The Harness case had already been in litigation in some of its phases. This case was assigned to M. C. Early, Esq., one of the leading lawyers of St. Louis, who devoted many months to a careful investigation of the evidence and reached the conclusion that the case should be tried in the courts.

When the time arrived for the trial, as Mr. Early was not primarily a trial lawyer, Judge Parker, who was then Special Assistant Attorney General, was assigned to try this case in association with Mr. Early. While I was not present at the trial and, owing to the large number of cases which were then under consideration, was not familiar with all the details of the Harness case, yet I know that both Mr. Early and Judge Parker devoted a great deal of labor to the careful preparation of the case. I have been informed, both by the judge who sat in the trial and by other counsel for the Government who were present, that Judge Parker conducted the case admirably, but the trouble was that when the evidence was presented the judge took the view that the Government had failed to establish the conspiracy charged.

The result was in no way due to any fault on the part of Judge Parker, and I have never heard any suggestion of criticism of his conduct of the case until the last few days. I think that this suggestion is most unjust and that it is due him that I should make this statement.

Very sincerely yours,

HENRY W. ANDERSON.

Mr. OVERMAN. One more letter I send forward from a lawyer associate in the case, Mr. Richard L. Merrick, and ask that it be read.

The VICE PRESIDENT. Without objection, the clerk will read.

The legislative clerk read as follows:

WASHINGTON, *April 26, 1930.*

Hon. LEE S. OVERMAN,
United States Senate, Washington, D. C.

MY DEAR SENATOR OVERMAN: In yesterday's Washington News there appeared an editorial and an article concerning Judge John J. Parker.

The editorial refers to the so-called Harness case and, among other things, contains the statement that the trial judge "charged that

Parker and his fellow counsel had in their possession—and were suppressing—documents tending to prove the innocence of the defendants," and that one of these documents was found in Judge Parker's possession.

In the article it is stated that the Government attorneys in the Harness case, which Judge Parker prosecuted, attempted to indict one of the defense attorneys in the United States District Court at Elkins, W. Va.

I was junior counsel in the Harness case, was present at Elkins, W. Va., when the case was presented to the grand jury, and took part in the trial at Parkersburg, W. Va. I am, therefore, in a position to know and do know what transpired at both places.

Both of the statements or charges made by the News and referred to above are absolutely false.

The name of one of the attorneys for the defendants was interwoven with those of the defendants themselves throughout the facts in the Harness case, and, mistaking his action as an attorney for those of an individual, the grand jury evidenced a strong sentiment toward including his name in its presentment. Judge Parker recommended against such action, as also did his associates.

During the progress of the trial at Parkersburg, which lasted 11 days, the attorneys for the defendants made several written and oral requests upon Government counsel for the production of correspondence and other documents belonging to the files of the War Department. These were promptly turned over to defense counsel, with a few exceptions, as it was impossible to locate some of the letters and other papers desired, due to the fact that they were not in possession of Government counsel at Parkersburg. At no time was there any attempt on the part of Judge Parker, or any other attorney for the Government, to suppress any evidence. On the contrary, Judge Parker was most insistent that defense counsel be furnished promptly with every paper they demanded if the same was in possession of Government counsel.

Furthermore, during the progress of the trial, Judge Parker acquitted himself ably and honorably and presented the evidence on behalf of the Government fairly and impartially; that is, such of it as went in while he was examining witnesses. Other counsel in the case offered a great part of the testimony. Judge Parker and his associates were complimented by the court on the able manner in which they handled the case, and, according to information given to me, the chief defense counsel himself paid Judge Parker a tribute upon his handling of this case.

The transcript of the testimony offered during the trial of the Harness case is available. It will bear out the foregoing statements respecting what happened at the trial.

You are authorized to use this letter in any manner you may see fit, and if I can furnish any additional information upon the subject please let me know.

Very respectfully yours,

RICHARD L. MERRICK.

Mr. GILLETT obtained the floor.

Mr. NORRIS. Mr. President, will the Senator yield to me? I had not intended to take the floor to make an argument in the case at this time, but I have some letters and telegrams on the subject which the Senator from North Carolina [Mr. OVERMAN] has brought up.

Mr. GILLETT. I would prefer that those matters come in later.

Mr. NORRIS. The Senator must remember that one of the letters read was addressed to me.

Mr. GILLETT. They can come in at the same place in the RECORD, but I would like now to take the floor.

Mr. NORRIS. I do not intend to make a speech on the subject, but I thought it was only fair to show what action had been taken by the chairman of the committee upon receipt of those letters.

Mr. GILLETT. Certainly, but if the Senator would just as soon put them in later, I would rather have him do so.

Mr. NORRIS. Of course, I would not just as soon, but as the Senator has the floor I am deprived of the opportunity to put them in at this time.

Mr. GILLETT. Mr. President, I had not intended to discuss the legal aspects of this matter, for I had not studied the cases, but as I listened yesterday to the argument of the Senator from Idaho [Mr. BORAH] it seemed to me I saw running all through it a fallacy, and as I read the cases this morning I am confirmed in that opinion. I wish to point out what seems to me is the fundamental unsoundness of his argument.

At the outset I think it but fair to say also that I differ absolutely from the statement the Senator from Idaho just made that he would not vote for the confirmation of any judge who was committed to the Hitchman opinion as Judge Parker was.

Mr. President, Judge Parker is not, in my opinion, committed in the least to that opinion. We here in the Senate are free to express our opinions about cases, to differ from the Supreme Court, and to criticize their action; but a judge of an inferior court has not that freedom. We can not tell when a judge of an inferior court renders a decision following, as Judge Parker said he did in this case, an opinion of the Supreme Court, whether he favors that opinion or not, whether he believes it is the right opinion or not, whether he sides with the majority or the minority of the court, or whether if he should go upon the Supreme Bench he would vote to sustain or overrule that opinion. The duty of the judge of an inferior court is to follow the law as laid down by the Supreme Court, and it makes no difference what the courts of Ohio or New York or other States may do, he is bound by the decision of his own Supreme Court. As I said, neither the Senator from Idaho [Mr. BORAH] nor I nor any other Senator can infer from Judge Parker's opinion what his real opinions are as to the Hitchman case.

Mr. President, the fallacy which I think runs all through the argument of the Senator from Idaho is this: The Hitchman case gave an injunction both against peaceful persuasion against breaking a contract and peaceful persuasion against leaving the mine. But the Red Jacket case gives an injunction not against peaceful persuasion for a man to leave the mine or to join the union. It only gives an injunction against men breaking a contract, and there is the fundamental distinction, as it seems to me.

Mr. BORAH. Mr. President, does the Senator mean an injunction against persuading them to break a contract?

Mr. GILLETT. Against persuading them to break a contract. They may be persuaded to leave the mine, they may be persuaded to join the union, but they have made a contract that they shall not at the same time continue in the employment and join the union, and that is what they can not be persuaded to break.

Mr. BORAH. Mr. President, may I ask the Senator what part of the contract they were about to break?

Mr. GILLETT. I do not know. They are enjoined against breaking any part of it.

Mr. BORAH. What would have been breaking the contract?

Mr. GILLETT. To ask them at the same time to continue at work in the mine and join the union.

Mr. BORAH. Has the Senator found any evidence in the case that there was any such thing intended?

Mr. GILLETT. No; I have not looked at it. Why should it be proven? The injunction is asked against that thing.

Mr. BORAH. Ordinarily an injunction has to be based upon facts.

Mr. GILLETT. Yes; and there are facts that they were trying to unionize the mine, and that is the way they go about unionizing a mine. That is the way they went about in the Hitchman case and that is the way, of course, they always go about it. They go about trying to get the men at the same time to join the union and then strike against the mine owners. The judge below found that there was sufficient evidence, and that makes a prima facie case.

The Senator from Idaho made a great point about the Tri-City case as modifying the Hitchman case. In fact, he went so far as to say that if there had not been the Tri-City case, that if simply the Hitchman case was the authority, he should not have blamed Judge Parker for his decision. Mr. President, I venture to say that the Tri-City case does not in the slightest modify or alter the Hitchman case as governing the Red Jacket case.

I am not going to weary Senators by going into the details because they are familiar with the cases, having just heard them so lucidly expounded by the Senator from Idaho. The Tri-City case differs from the Red Jacket case inasmuch as the injunction in the Tri-City case was against peaceful persuasion to leave the plaintiff's employ and not against persuasion to break a contract. That was not an illegal persuasion.

The illegal persuasion on which the injunction is founded was to persuade them to break a contract. That is illegal.

How did the court discriminate between the Hitchman case and the Tri-City case? In two ways, one on the ground that the union was local and so had a direct interest, and the other on the ground that the persuasion was in the Hitchman case not lawful. On page 211 the court said, speaking of the Hitchman case:

> The plan thus projected was carried out in the case of the complainant company by the use of deception and misrepresentation with its non-union employees by seeking to induce such employees to become members of the union contrary to the express term of their contract of employment that they would not remain in complainant's employ if union men.

There is the exact Red Jacket case. The court discriminates between the Tri-City case and the Hitchman case because the Hitchman case had that provision which applied in the Red Jacket case and the Tri-City case did not have it. There is the distinction between the two cases. The Tri-City decision does not apply at all to the Red Jacket case and the facts which exist

in that case; but the Tri-City case leaves the Hitchman case as controlling in a case where the attempt is peacefully to persuade men to break their contracts.

There is another distinction made by the court which might be argued, but I am not going to take the time to do so except to call attention to the fact that the Supreme Court holds that labor unions, if they are in the community or in the vicinity, have a right to interfere, and that in the Tri-City case the labor union was local. The court said:

> The statement of the purpose of the plan is sufficient to show the remoteness of the benefit ultimately to be derived by the members of the international union from its success and the formidable country-wide and dangerous character of the control of interstate commerce sought. The circumstances of the case make it no authority for the contention here.

They make that distinction between a local union and what might be termed a national union and refer to it again on page 210. In the Red Jacket case no one would contend that the United Mine Workers of America were a local union. But aside from that there is a fundamental distinction between the Tri-City case and the Hitchman case, one applying to lawful and the other to unlawful persuasion, and that which makes the Hitchman case the authority in the Red Jacket case is that the Hitchman case forbids an attempt to peaceably persuade men to break their contract, and that is exactly what the injunction in the Red Jacket case aims to prevent. An injunction was not sought against the act of persuading men to leave the mines, nor against persuading men to join the union; but simply against persuading men to break their contract. Mr. Justice Brandeis, in his dissenting opinion in the Hitchman case, shows that to his mind that was a vital question, because, in giving the reason for his dissent from the majority, he says:

> Fifth. There was no attempt to induce employees to violate their contracts.

That shows that with him one of the grounds——

Mr. BORAH rose.

The PRESIDING OFFICER (Mr. STEIWER in the chair). Does the Senator from Massachusetts yield to the Senator from Idaho?

Mr. GILLETT. I yield.

Mr. BORAH. The Senator, however, will bear in mind that Justice Brandeis said there was no attempt to induce employees to break their contract, because they had a right to quit whenever they wanted to do so.

Mr. GILLETT. That was true, and it is perfectly true in this Red Jacket case. It would not be asking the employees to break their contract to ask them to quit, because they could leave at will. So, that simply confirms my argument, for in the Hitchman case there was no attempt made to get employees to break a contract, according to Justice Brandeis, and that was one ground of his dissent from the majority of the court.

There is another respect in which Justice Brandeis's decision is significant. The Senator from Idaho, after drawing the distinction between the two cases, stated—and it really looks to me as if that were the real basis of his argument—that the contract in the Hitchman case, in his opinion, was void as being against public policy, and was illegal. That may be his opinion; it may the opinion of every other Member of the Senate; it may be the opinion of Judge Parker; but, after all, that does not justify Judge Parker to rule that way if the Supreme Court has decided to the contrary.

The Senator from Idaho stated that it was only a majority opinion that held that such a contract was valid. The Senator is mistaken in that. The court was united in the opinion that the contract was valid. Mr. Justice Brandeis in his dissenting opinion explicitly states that the contract is valid. He said:

> An employer, in order to effectuate the closing of his shop to union labor, may exact an agreement to that effect from his employees. The agreement itself being a lawful one, the employer may withhold from the men an economic need—employment—until they assent to make it. Likewise an agreement closing a shop to nonunion labor being lawful, the union may withhold from an employer an economic need—labor—until he assents to make it. In a legal sense an agreement entered into, under such circumstances, is voluntarily entered into; and as the agreement is in itself legal, no reason appears why the general rule that a legal end may be pursued by legal means should not be applied.

There we have a statement not only that the majority of the court, as we all know, held in the Hitchman case that the agreement was legal but Justice Brandeis, representing the minority, the dissenting judge himself, clearly states that the agreement was legal. It makes no difference what we may think as to whether such a contract is legal or whether it ought to be legal; Senators may all agree with the uncompromising statement of the Senator from Idaho that it is an outrageous, unconscionable contract, and ought to be held illegal, but that does not affect Judge Parker. He is bound to follow the opinion of the Supreme Court of the United States telling him that it is legal. Therefore, in rendering his decision, while he may be in complete sympathy with the Senator from Idaho, that does not justify him in departing from the decision of the Supreme Court which declared the contract to be legal.

The Red Jacket injunction was issued against persuading to break a contract—an unlawful purpose—and the inferior court, under the authority of the Hitchman case, could not refuse to issue it.

Of course, the argument against the so-called "yellow dog" contract is an appealing one. By the way, the appellation "yellow dog" was, of course, given it in an opprobrious way to excite against it prejudice, as the Senator from Idaho practically admitted by saying in the course of his speech that he would not use the term again, although I observed that the self-restraint which he imposed upon himself could not be maintained.

Mr. BORAH. The expression is so illustrative of the contract that I could not refrain from using it.

Mr. GILLETT. Exactly; but it makes no difference what our opinion may be—whether we think it is obnoxious, against public policy, contrary to our sympathy—nevertheless it has been upheld by the majority and by the dissenting members of the Supreme Court. So Judge Parker had not the right, as Senators have, to state that, in his opinion, it is illegal, because as the judge of an inferior court he is bound by the decision of the Supreme Court.

The whole question of union contracts and union labor deeply interests certain sections of our people, but it is one, of course, as to which there are two sides. I imagine that everybody sympathizes with what the unions have accomplished; everybody recognizes that their growth has been accompanied by an improvement in the conditions of the workingman; and so we are all glad that the unions have existed and that they have accomplished the results which have followed their activities. Our instinctive sympathy in every contest goes to organized labor, partly because we always sympathize with the "under dog," although in some cases, particularly in the case of the United Mine Workers, they have not always been the "under dog," and there have been acts committed by labor unions which have excited our abhorrence as much as the grasping and overpowering conduct of the employers. However, as a rule the labor unions have accomplished great good for the country.

One thing they have accomplished is that to-day there probably exists a better relationship between capital and labor than ever before. How that is going to be worked out in the future, no man can tell; whether it is going to be worked out as the Senator from Idaho hopes, by declaring such contracts as in the Hitchman case illegal and against public policy, or whether it will be worked out by the gradual recognition by both employer and employee that a state of warfare ought to end and that there should be a recognition of each other's rights and a mutuality of interest which many great corporations are now trying to bring about, or whether it will be worked out on some new plan, which we all desire, is in the future. The Supreme Court, however, lays down the law for the judges of inferior courts. It is not for those judges to try to affect the relations between capital and labor apart in contravention of the decisions of the Supreme Court.

And so what we want on the Supreme Court bench is not so much a man who is committed to any particular doctrine as a man of ability and character and broad vision, who will consider both precedents and principles. Judge Parker, if his nomination shall be confirmed, will just as likely be in the minority, on the dissenting side, for all we know, as he will be on the majority side on the issue as presented by the Hitchman case. So it seems to me that this is not a feature which prevents our voting for the confirmation of Judge Parker.

Mr. DILL. Mr. President——

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Washington?

Mr. GILLETT. I yield.

Mr. DILL. Does the Senator think that Judge Parker has shown any evidence that he will be the kind of man who will stand alone, if need be, for his convictions?

Mr. GILLETT. From what I am told, I think he is.

Mr. DILL. But the Senator justifies his decision in the Red Jacket case on the ground that he followed the opinion of the majority of the court.

Mr. GILLETT. Yes; he was obliged to follow it; what else could he do?

Mr. DILL. I think the Senator from Idaho answered that suggestion.

Mr. GILLETT. I did not hear the Senator from Idaho attempt to answer it. The fact that a judge of an inferior court follows the decision of the Supreme Court of the United States is, I think, no evidence at all as to what his opinion may be as to the merits of the question. Does not the Senator agree to that?

Mr. DILL. I do not agree to it. In a case of this kind I think that the judge of an inferior court has the same right to show independence as has a judge of the Supreme Court, and I think if he is fit to be on the Supreme Bench he will exercise that right by giving expression to his dissenting views.

Mr. GILLETT. The Senator radically differs from me in his opinion of the duty of the judge of an inferior court. I believe it is his duty to administer the law as it is and not according to what his opinion of what the law ought to be. For him the law is not what the Senator from Washington thinks or what the Senator from Idaho thinks or what I think, but for him the law is what the Supreme Court has decided it to be, and he is bound by that decision. The fact that he is so bound ought not to affect our opinion of him.

Mr. DILL. Mr. President, will the Senator yield further?

Mr. GILLETT. Certainly.

Mr. DILL. But if a majority of a different view comes into control of the Supreme Court, then the law is according to the new majority.

Mr. GILLETT. Certainly it is; and then the judge of the inferior court would follow that.

Mr. DILL. So that the only hope of ever changing a bad precedent is to have judges of sufficient independence to stand up and overthrow it?

Mr. GILLETT. Yes; but those judges must be on the Supreme Court and not on an inferior court. An inferior court judge has no right to show independence against the opinion of the Supreme Court.

Mr. DILL. That is what I asked the Senator, namely, whether Judge Parker had ever shown such independence of view as would justify us in thinking that he would be that kind of a judge?

Mr. GILLETT. I am told he has.

Mr. DILL. I should like to have the Senator give me some evidence of it.

Mr. GILLETT. There is evidence in the attestation of his capacity by no end of lawyers who know him. I do not know him. What the Senator is really trying to indicate is that the way an inferior court judge decides in a particular case ought to give us an inference as to his real opinion. I think that is not the case.

Mr. DILL. Does the Senator think that any lawyer who may have a case before the Supreme Court feels free to oppose Judge Parker when he will have to appear before him if he becomes a member of the Supreme Court or even if he continues to be a judge in the circuit court?

Mr. GILLETT. No lawyer is obliged to give such statements in Judge Parker's favor as have been given. The Senator, I think, has not a very high conception of human nature if he tries to make us think that all the attestations to the worth of Judge Parker have been given because of selfish purposes.

Mr. FESS. Mr. President——

The PRESIDING OFFICER (Mr. BRATTON in the chair). Does the Senator from Massachusetts yield to the Senator from Ohio?

Mr. GILLETT. Certainly.

Mr. FESS. The Senator raised a question a moment ago that is the source of all of this confusion in my mind.

The Senator from Idaho referred to this contract as being an unconscionable one, and I am not so sure but that I agree with him. If it is a legal contract, if it is within the terms of the law or recognized by law, what latitude has a judge to go beyond the law and allow his judgment to be determined upon what he thinks ought to have been the law instead of what is the law? That is the phase of the matter that disturbs me.

Mr. BORAH. Mr. President, will the Senator permit me to interrupt him?

Mr. GILLETT. Certainly.

Mr. BORAH. The Senator says he is almost persuaded that this is an unconscionable contract. If the Senator were sitting as a chancellor and were called upon to issue an injunction to protect an unconscionable contract or a contract which approaches being unconscionable, I am perfectly sure that the Senator would not inhibit men peacefully discussing that kind of a contract.

Mr. GILLETT. Mr. President, this injunction does not prohibit them from peacefully discussing that kind of a contract. It simply prohibits men from trying to make men break that contract when the Supreme Court has said that it is a valid contract.

Mr. BORAH. Exactly; but the discussion is prohibited, the same as the breaking. That is to say, they are not permitted even to discuss the matter. You will find instances where that conclusion follows. If the discussion goes forward, there is a liability to be a break of the contract. Therefore, if a union-labor man had gone to one of these men and discussed the matter with him, he would have been within the purview of that injunction.

Mr. GILLETT. That is a question which would have to be settled by the court, and neither the Senator nor I can settle it. It depends upon whether the discussion was in an effort to persuade him to break his contract. If it was trying to persuade him to break his contract, then he comes within the scope of the injunction, and not otherwise.

Suppose every Member of the Senate agreed that this is an unconscionable contract. If any Member of the Senate—even the Senator from Washington [Mr. DILL], himself, who raised the question—were a judge of an inferior court and had before him a decision which held, not by a divided court, as the Senator from Idaho intimated, but by a unanimous court, that such a contract was legal, I think he would be bound, if he was performing his duty, to issue the injunction.

Mr. DILL. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Massachusetts yield to the Senator from Washington?

Mr. GILLETT. Certainly.

Mr. DILL. I can only say that if I were a judge, and felt myself bound by the circumstances being so identical, I at least would state my own personal repudiation of it. I would not accept it as my own view if I were compelled to do it; but I do not think that there is any evidence by which any one can conclude from reading these cases but that there is plenty of difference between the facts concerned that would justify a different line of reasoning and a different judgment by a judge who desired to reach a different conclusion.

Mr. GILLETT. The Senator from Idaho has very admirably and with great ability tried to show that, and to my mind he has absolutely failed, because he has not even touched upon the fact that in this case, differing absolutely from the Tri-City case, they were not simply ordering the defendants not peacefully to persuade men to leave their employment but they were forbidden peacefully to persuade men to break their legal contract.

Mr. BORAH. Mr. President, I will discuss that matter, not in the Senator's time, but a little later; but, as an illustration of how a judge might express himself, although not agreeing with the opinion, the judge who sustained the contention in the Ohio decision because the Federal court had decided the matter says:

> Inasmuch as the only question involved is the Federal one and the Supreme Court has decided that in the Hitchman case, I yield to that authority. However, I express my full agreement with the dissenting opinion.

Mr. GILLETT. What case is that?

Mr. BORAH. That is the case of Jackson against Berger in Ninety-second Ohio State.

Mr. GILLETT. Exactly. He was not an inferior judge to the Federal court.

Mr. BORAH. No; but he held that it was a Federal question and therefore he was bound by it, just as the Senator is arguing that this man is bound by it; but in accepting the decision he said, "I disagree with it."

Mr. GILLETT. He preferred to say that he disagreed. I think myself, and the practice of this country for a good many years has illustrated that, that it is not wise for judges of inferior courts, in carrying out the principles of the Supreme Court, to express either their adherence or their disapproval of the opinions of the court which constrain them.

Mr. GLASS. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Massachusetts yield to the Senator from Virginia?

Mr. GILLETT. Certainly.

Mr. GLASS. Unhappily, all of us here are not lawyers.

Mr. GILLETT. Not unhappily, perhaps.

Mr. GLASS. As a plain man, I should like to ask a question in order that we may apportion the respective culpability of the judiciary and of the Congress.

Does a decision of the Supreme Court of the United States that a contract is lawful necessarily preclude Congress from declaring a contract of that nature contrary to public policy and making it unlawful?

Mr. GILLETT. Oh, no! We can declare it contrary to public policy, and that makes it unlawful, unless our declaration is in conflict with the Constitution.

Mr. GLASS. Then why have we not done that long ago, if this contract, as decided under the Hitchman case, is so wicked? And if we could do it and did not do it, are we not culpable in the matter?

Mr. GILLETT. No; I do not believe we are, because I am inclined to think it would be held that it required an amendment of the Constitution; but I am not sure about that.

Mr. GLASS. That is what I wanted to know.

Mr. GILLETT. I am not sure about that. That is for the Supreme Court to determine.

Mr. GLASS. If the court decided the matter upon strictly constitutional grounds, it is not competent for Congress to touch it.

Mr. GILLETT. Of course not; but they did not in this case. They simply did not say whether it was on constitutional grounds or not. They simply said that it was legal, so that question I can not answer.

There is one other aspect of this case that I wish to touch upon. Another objection that has been made against Judge Parker, and that is his statement in one of his speeches, when he was running for governor, about the participation of the negroes in office in North Carolina.

On that issue I differ absolutely from Judge Parker. I regret that he holds that opinion, but I recognize that different environments have occasioned different opinions on that question; and I recognize that probably there are very few in the whole South whom either a President or a Senate would think were fit to be on the Supreme Bench who are not at least as much opposed to the negro holding office as was Judge Parker. I would not on that account forbid a large section of the country representation on the court. Moreover, from what I am told of him, I judge that he is a man of such breadth of vision, and such broad humanity and such character that if cases involving that question came before him he would treat them with justice and with fairness and without any proscription of any race. So while, as I say, I regret that he can not in all things see as I do, yet I would not oppose him for the Supreme Bench on that ground.

Mr. GLASS. Mr. President——

The VICE PRESIDENT. Does the Senator from Massachusetts further yield to the Senator from Virginia?

Mr. GILLETT. I do.

Mr. GLASS. May I ask the Senator if the State of Massachusetts has not a statute which determines that a citizen of that State who is illiterate is unworthy to exercise the right of suffrage?

Mr. GILLETT. Certainly.

Mr. GLASS. Then why does the Senator assume to know more than Judge Parker about the qualifications of the citizens of North Carolina?

Mr. GILLETT. I do not catch the Senator's point.

Mr. GLASS. It is plain enough. The Senator says he differs from Judge Parker in his declaration that a certain class of people are not competent to discharge the high functions of government in North Carolina.

Mr. GILLETT. Yes.

Mr. GLASS. I say, why does the Senator assume to know more than Judge Parker about those people in North Carolina?

Mr. GILLETT. I do not assume to know more. I am sure I do not know as much.

Mr. GLASS. I am sure the Senator does not. [Laughter in the galleries.]

The VICE PRESIDENT. The occupants of the galleries must be in order.

Mr. GILLETT. I think we have to take into consideration, in putting a man upon the bench, not only the high and extensive jurisdiction which he will have to exercise but the duration of it. Judge Parker, I understand, is 45 years old. Therefore, in his case, under the ordinary expectations of life, he will be at least 25 years on the Supreme Bench. That is a long period of time. None of us know what issues will come up in the next 10 or 20 years or 30 years. We can not guess. What to-day we are arguing with so much earnestness, to-morrow may be utterly irrelevant. The opinion which we should like a judge to hold to-day 10 years from now the generation then existing may care nothing about. Therefore, what we ought to desire in a judge is not so much certain opinions upon the issues of to-day as ability, character, judicial temperament, and open-mindedness.

I can think of no place where a man ought to develop an independent and a wise judgment as to the affairs of the country and the decisions of the court as on the Supreme Bench. He is there for life, independent, without fear of removal or of reversal. He has nothing to look for except to leave an honored name and to advance the interests of the whole country. Every judge who is fit to go upon the bench ought to improve and grow in the period of his service. Therefore I say what we want is not so much rooted opinions on the issues of to-day as a wide and broad vision and ability which will meet the unsuspected issues of to-morrow.

Mr. CONNALLY. Mr. President——

The VICE PRESIDENT. Does the Senator from Massachusetts yield to the Senator from Texas?

Mr. GILLETT. Certainly.

Mr. CONNALLY. Does the Senator from Massachusetts think that a judge on the Supreme Court would be bound by the same obligation to respect the decisions of that court that he expressed as a subordinate judge?

Mr. GILLETT. No; I do not.

Mr. CONNALLY. I think that is highly important, because the Supreme Court is really making law every day; and a judge who is worthy to sit on that bench ought not to be a slavish servant merely to precedent because it is precedent but ought rather to have the philosophy of the law and be able to improve as time goes on.

Mr. GILLETT. The Senator obviously was not here when I said, some time ago, that the fact that Judge Parker, as a judge of the inferior court, had submitted to the opinion of the Supreme Court, did not at all indicate that that was his opinion, and when he is on the Supreme Bench he might take an entirely different attitude. Now, as a member of the inferior court, he is bound by the decisions of his superiors. Then he will be one of the superiors himself and independently will help make the law.

Why, judges on the Supreme Court develop and change their opinions. I have in mind two very striking illustrations, which I do not think it would be proper for me to name, of judges who, in their course of service, showed a constant trend from their attitudes when they went on the bench, one gradually seeming to become much more conservative and the other appearing to become much more radical.

Such changes we ought to anticipate, and, indeed, we ought to hope of a judge that with his impressive associations and high responsibilities he will grow and develop.

It seems to me, from all I can learn of Judge Parker, that he exceptionally meets those requirements. I appreciate that a great practical argument is used against him. How much it will influence Senators I do not know. From all over the country there have been showering in upon us letters and telegrams from organizations asking us to vote against him. That they will have weight, inasmuch as we are human and many of us candidates for reelection, is inevitable. But I should deeply regret that great organized bodies of voters should be encouraged to think that their selfish, interested wishes should decide who will go upon the Supreme Court rather than the qualifications of the candidate; that no man can be confirmed whose previous acts give them fear that he will decide cases according to his opinion of the law rather than according to popularity with them. That is a blow at the independence of the judiciary and it is a blow at the independence of the Senate.

Every lawyer or judge of an inferior court in the back of whose head lurks the not ignoble ambition that some day he may attain an eminence which will entitle him to be considered for that highest honor to a lawyer, a seat on the Supreme Court, ought not to have impressed upon his mind the suspicion, the degrading suspicion, that not talent and wisdom and courage will win the prize, but deference to the interested wishes of great organizations of voters; that the principles and conduct of the demagogue will unlock the door to the bench; and that the judicial ermine, as too often the political toga, is the reward of obedience to public clamor.

From all I can learn Judge Parker has in an exceptional degree ability, industry, wisdom, poise, uprightness—those qualities of mind and heart which will make him an eminent judge.

And I will not allow the telegrams and messages and pressure from organizations who have taken offense at his judicial decisions or his political beliefs outweigh with me his sterling qualifications.

Mr. GOLDSBOROUGH. Mr. President, I hold in my hand a copy of the Baltimore Sun of to-day. It has in its columns an editorial entitled "No; Not a Martyr." It is in criticism of Judge Parker. I desire to read the concluding paragraph of that editorial. It is as follows:

> When you get to the very rock bottom in this fight over Judge Parker, the essential and truly significant thing is not the outbreak from the negroes or from organized labor. It would be hard to find any man of active political or professional life against whom some criticism from some group could not be made. The essential and significant thing is that when these criticisms appear against Mr. Hoover's

latest appointee to the Supreme Bench there is nobody who arises and says with conviction: "Nevertheless, this is a man of the front rank, fully equipped in native intellectual power and acquired knowledge to serve on the highest court—as good a man and lawyer as can be had." Nobody says that.

And because nobody says it and nobody can say it, or anything like it, the Senate will be justified if it rejects this appointment.

I hold in my hand a telegram, dated April 28, addressed to me, which reads as follows:

BALTIMORE, MD., *April 28, 1930.*

Hon. PHILLIPS LEE GOLDSBOROUGH,
United States Senate, Washington, D. C.:

As we have seen in the newspapers that some suggestion has been made in some quarters that Judge Parker is not of the caliber suited for the Supreme Court, we desire to express our opinion that in learning, ability, fairness, and every other respect he ranks high and is well suited for the position, and this opinion, we are sure, is that of the bar generally here.

JOSEPH C. FRANCE.
EDWIN G. BAETJER.
CHARLES McH. HOWARD.

I should add, Mr. President, that Mr. Edwin G. Baetjer and Charles McHenry Howard are members of the law firm in the city of Baltimore of Venable, Baetjer & Howard, who have been and are now, if I am correctly informed, the general counsel for the Baltimore Sun. Together with Mr. Joseph C. France, these men are of the highest eminence in the city of Baltimore. No man stands higher upon the rungs of the legal ladder than do the three citizens who have signed this telegram.

Mr. FESS. Mr. President, to-day about noon several communications were put into the RECORD in reference to the Harness case. I have a statement here, made by the junior counsel in that case, in which he gives a memorandum of the proceedings. It answers the charge that was made by a newspaper in this city, and I ask unanimous consent to have it printed in the RECORD. It is from Mr. Richard L. Merrick, junior counsel in the case.

Mr. WALSH of Montana. Mr. President——

The VICE PRESIDENT. Does the Senator from Ohio yield to the Senator from Montana?

Mr. FESS. I yield.

Mr. WALSH of Montana. The newspaper account of this affair, as I read it, indicated that the trial judge, in instructing the jury to return a verdict of "not guilty," indulged in some comments, in the course of which occurred a reprimand of the attorneys prosecuting the case. Reference was made in the letters introduced this morning to what transpired in the trial, and it is asserted that nothing of the kind took place.

It occurred to me that all question about the matter could be removed if we had a copy of the instruction given by the court and his remarks in connection therewith. Indeed, one of the letters introduced in the RECORD this morning says there is in existence a transcript which will disclose just exactly what took place.

I inquire of the Senator from Ohio whether what he now offers for the RECORD is the official transcript of what took place on that occasion.

Mr. FESS. It is not. It is a statement made to me by the junior counsel in the case.

Mr. WALSH of Montana. That is what I meant.

Mr. FESS. I would say to the Senator that I have in my possession the transcript of the case. It happens to be over in my office. In the transcript will be found the statement of the judge presiding, in which he complimented the conduct of the case. If it is thought wise, and is proper, I can have it put into the RECORD.

Mr. WALSH of Montana. I should think it would be very enlightening.

Mr. FESS. I do not happen to have it here in the Senate.

Mr. WALSH of Montana. That would seem to be an authentic account of what actually did take place.

Mr. FESS. Yes.

Mr. GLASS. Mr. President, one of the letters read from the desk at the direction of the Senator from North Carolina was from the trial justice.

Mr. FESS. That is true.

Mr. WALSH of Montana. I noted that fact, and yet, even the trial judge did not accompany his letter with a copy of the transcript showing what actually did take place.

Mr. GLASS. There would be no occasion for him to do that in the letter which has been placed in the RECORD. I have no doubt that if appealed to, the trial judge would be very glad to supply that.

The VICE PRESIDENT. Without objection, the matter referred to by the Senator from Ohio will be printed in the RECORD.

The matter is as follows:

WASHINGTON, D. C., *April 28, 1930.*

MEMORANDUM: ARTICLE IN BALTIMORE SUN OF APRIL 28, 1930, RELATING TO JUDGE JOHN J. PARKER

To-day my attention was brought to an article which appeared in the Baltimore Sun of April 28, 1930, under the name of Franklyn Waltman, jr., dated at Washington, April 27, 1930, wherein Judge Parker's communication to Senator OVERMAN was quoted and reference was made to a letter to Senator NORRIS from Mr. Ralph Hayes, a New York banker.

In the article it is stated that Mr. Hayes interjected the "war fraud cases" into the controversy over Judge Parker's confirmation, "making what amounted to a charge that Judge Parker sought to deceive the court and jury by suppressing evidence in one of these cases." The writer further refers in his article to Mr. Hayes's letter as a "surprise last-minute movement on the part of the Parker opponents to destroy the last hope held by the administration for the confirmation of the President's appointee," and as a "bombshell."

According to the article of Mr. Waltman, Mr. Hayes was private secretary to Hon. Newton D. Baker when he was Secretary of War. The article refers specifically to the so-called Harness case, and states that "preliminary to the trial," according to Mr. Hayes, "the Government prosecutors sought to obtain from grand-jury witnesses an oath of secrecy to prevent their revealing or discussing the testimony given the inquisitorial body. Judge William E. Baker disavowed 'the tactics of the Government,' and ordered the grand jury to desist from administering an admonition of secrecy to witnesses appearing before it."

An excerpt from Mr. Hayes's letter is quoted in the article as follows: "The most 'disquieting feature' of the Harness trial, Mr. Hayes contended, was 'the fact that the innocence of the accused was indicated by evidence submitted, not by themselves, but by information in the possession of, and extracted from, the prosecution itself.'"

The article concludes with the following quotation from Mr. Hayes's letter:

"Judge Baker's pronouncement to the reconvened grand jury at Elkins regarding the unlawful oaths of secrecy exacted by Judge Parker or his associates, Judge Groner's dismissal of the two defendants in the Harness case without even permitting their defense to be heard, that same jurist's searing address from the bench in refusing to allow any of the case to go to the jury after hearing the testimony, and his amazement that the prosecution should be found in possession of documentary evidence tending to exonerate the accused—these circumstances may possibly be susceptible of a more favorable interpretation than the one which comes first to mind, but it can scarcely be said that they illustrate standards of conduct and legal attainment that would adorn and have traditionally adorned the highest bench in our judiciary."

The undersigned was junior counsel in the Harness case. Judge Parker was one of the trial lawyers, but he had nothing whatever to do with the gathering of evidence, either documentary or testimonial. He came into the case a comparatively short time before its presentation to the grand jury.

I was present during the presentation of the case to the grand jury, was authorized to and did appear before that body in connection with the offering of evidence, and took part in the trial of the case at Parkersburg, W. Va., before Judge D. Lawrence Groner, who, for that trial, replaced Judge William E. Baker, United States judge for that district. The trial began January 14, 1924, and was concluded on January 24, 1924. The transcript of the evidence contains 2,979 pages. The Government offered 47 exhibits, and the defense about the same number, the latter consisting of advertisements to a large extent.

Since reading the article in the Baltimore Sun, I have examined the transcript of the evidence adduced at the trial of the Harness case and find absolutely no foundation of fact for much of Mr. Hayes's remarkable communication. I could remember no such instance as he refers to, but, in order to refresh my recollection, I read the statement of the court at the time he directed a verdict of acquittal in full. Instead of intimating that Judge Parker and his associates had been guilty of misconduct, the trial judge paid them a tribute in the following language, which appears on page 242 of volume 4 of the transcript:

"My friends who represent the Government earnestly contend in this case for a verdict. Their conduct has been characterized by fairness; I think by great ability. * * *"

As to Mr. Hayes's statement that Government counsel were trying to obtain oaths of secrecy from the witnesses who appeared before the grand jury, permit me to state that this is not true. The witnesses were advised that the deliberations of the grand jury were confidential, and they were asked not to publish or discuss anything that occurred in the grand-jury room. No oath was asked nor administered. During the presentation of the case to the grand jury Government counsel were continually spied upon and annoyed by detectives hired by the defendants through their counsel. One of these detectives was interrogated as to his business there, and he frankly stated that he had been sent to Elkins by the principal attorney for

defendants, Mr. Frank J. Hogan, for the purpose of obtaining all the information he could concerning what was going on.

It is hard for the ordinary individual to realize and understand the difficulties that confronted Government attorneys in the Harness case. The defendants were, for the most part, men of means and political standing in their communities. They had served in the branch of the Government having control over the commodities constituting the subject matter of their contract with the Government. Their friends and acquaintances were still in the Government service when the case was under investigation. They had the sympathy, if not the actual protection, of such friends and acquaintances in the service, and the lack of cooperation with Government counsel in their attempts to obtain evidence was very marked, to say the least. The witnesses called by the Government at the trial were, in many instances, personal acquaintances of the defendants, or, at least, many of them. Their testimony was reluctantly given. On direct examination by Government counsel they appeared to be hedging in many instances, but on cross-examination by defense counsel they were willing witnesses. At the trial the defense procured from the files of the War Department correspondence and records that counsel for the Government had been told did not exist and for which 18 months had been spent in fruitless search. Among the documents procured by Government counsel traces of others, particularly letters, were found, but the letters themselves were not located. In many instances, the attorneys for the Government were able to give dates and apparent subject matters of the letters, but the file copies thereof were never found, although trips to the Middle West and other storage places for leather goods and harness were made and days spent in going through the files and records there, particularly at Jeffersonville and New Cumberland.

Referring specifically to the statement made by Mr. Hayes, as the same is quoted in the Baltimore Sun, that "the innocence of the accused was indicated by evidence submitted, not by themselves but by information in the possession of, and extracted from, the prosecution itself," I wish to state that this is absolutely without any foundation of fact whatsoever. Several written and oral requests to produce documents were made by defense counsel upon Government counsel, and in each instance the papers asked for were immediately produced, with the exception of a few letters, which were not in possession of the Government attorneys and were not, for that reason, produced. But there was no evidence in the possession of the attorneys for the Government that established the innocence of the accused, and that charge is untrue. It is true that the defendants did produce from the Government files, and Judge Groner commented upon that situation, certain records and documents which they maintained established the innocence of the defendants, and particularly Morse, Byron, and Goetz. These records related to the advertisements of surplus harness and leather goods by Morse, and the judge took the view that the Government had failed to establish its charge that the defendants attempted to stifle competitive bidding as a part of the conspiracy charged in the indictment. Judge Parker had none of these records and documents in his possession, nor were they extracted from the prosecution.

As indicative of the trial judge's attitude toward the activities of the defendants the following is quoted from page 2478 of volume 4 of the transcript of testimony at the trial:

"I think there ought to be a law which makes it a violation of law for any man who is engaged with the Government in any employment, after he goes out of the employment of the Government, to take a contract or have anything to do with any of the Government business relating to those things which he handled while he was in the Government. It makes me sick when I contemplate the crowd of people in Washington now—lawyers, all sorts of people—who are practicing in departments which they presided over a few months or a few years ago. I don't think it is right and I don't think it ought to be done, but that has nothing to do with this case."

While the trial judge directed a verdict of acquittal after all the evidence was in, both for the prosecution and for the defense, that is not the final test of whether or not the Government made out a case. It was the judgment of one man against many, including a number of Members of Congress and several attorneys in the Department of Justice and quite a number of Army officers and former Army officers who knew the facts. It is easier to conceive how one man might be mistaken than it is for a dozen or more. The members of the jury were not given an opportunity to make their finding, but, as above stated, were directed by the court to acquit the defendants. From that verdict the Government had no right of appeal. It was, therefore, a 1-man verdict which foreclosed the Government's rights after more than a dozen persons, many of them of considerable eminence, both as lawyers and as legislators, had expressed the view that the defendants had violated the law.

Criticism of Judge Parker's conduct in the trial of that case is as unjust as the statements contained in Mr. Hayes's letter are untrue. Evidently he has been misinformed, or he has deliberately attempted to injure Judge Parker's candidacy. Neither situation is justifiable, as the facts could have been ascertained by Mr. Hayes if he desired to obtain them.

There also appeared in a Washington newspaper a statement to the effect that Judge Parker and his associates attempted to indict one of the defense attorneys in the Harness case at Elkins, W. Va. This is untrue, as Judge Parker recommended against such action, and written evidence to that effect is in existence.

Respectfully,

RICHARD L. MERRICK.

The VICE PRESIDENT. Does the Senator from Ohio ask permission to print the transcript of the trial proceedings in the RECORD?

Mr. FESS. I would make that request if it were a matter that was in order. The court record is in my office, but whether I should submit it here or not is a question of ethics with me. I would be very glad to do so if it were in order. I do not see that there is anything out of order in it.

Mr. President, I am not going into this case in full just now. I rise only to make some observations in reference to some of the things which have just been uttered. Later on I shall go into other phases of the question.

I am inclined to support the confirmation of Mr. Parker because of the splendid tributes that have come to me from people who personally know him, as well as on account of the conclusion I have reached from a close examination into the character of the man, his training, and his accomplishments thus far.

Some have made suggestions that the judge is not so very well known, and that we are not justified in confirming him without more information than we have. I want to make this observation on the Supreme Court. The men on the court who have reached a very high place of recognition are the men who have entered it at an early age. That will be shown if we make an examination of the personnel of the Supreme Court.

John Marshall was 45 years of age when he was appointed by President Adams as a member of the Supreme Court. He remained on the court for 34 years, and during that time he handed down over 500 decisions. He delivered the opinions in 62 cases which involved Federal relations, which called into question the relationship of the Federal Government with the State governments.

Of these 62 opinions, 36 were written by himself. He delivered the opinions for the court. In only one case in his career did he differ from the majority of the court. In other words, the court was with him except in a single case. Marshall during that period of 34 years gave a standing to the court in the building up of a body of decisions which was pronounced at the time of his death to be the greatest accomplishment of any American citizen, even beyond the accomplishment of any President.

When Justice Story was appointed to the bench he was only 32 years of age. He had never had a day of judicial experience. He had been in public life only through serving one session in Congress. But James Madison, as Secretary of State under Jefferson, had observed the conduct and the mentality of the young man, and was so impressed that when the vacancy occurred in 1811, Story was called to the Supreme Court. He was criticized by Jefferson on the ground that while he was a Democrat—he did not use the term "Democrat," but "Republican"—he was somewhat imbued with New England Federalism. He was, therefore, not accepted by the public generally because of the opposition that he was too young; and, secondly, because he had had no experience. The outcome of this appointment was the greatest career on the Supreme Bench outside of Marshall, which was achieved by Judge Story. He remained on the bench up to the time of his death in 1845, having been appointed in 1811, and no man outside of Marshall so impressed the country with his great ability as did Justice Joseph Story. The time is not now here for me to submit some quotations from Story indicating the position we ought to take here in the selection of members of the court, but I shall do that at the proper time.

James Iredell, of North Carolina, appointed by Washington, was only 33 years of age when he went on the bench. While he did not remain so long, he achieved very remarkable success. The same could be said of Benjamin R. Curtis, who went on the bench and was a member of the court when the Dred Scott decision was rendered. Curtis was only 41 when appointed and was universally conceded, at the time he resigned from the bench, to have one of the greatest minds that had ever been on that court. A brother of Curtis, George Tickner Curtis, argued the Dred Scott case and he is to-day rated in history as one of our greatest historians. He paid a most wonderful tribute to Benjamin Curtis.

I have mentioned some of these men to indicate their age, because age has been offered as some objection to Judge Parker. Most of the leading men who reached high planes on

the Supreme Bench were below 50. John Jay, our first Chief Justice, was 44 years old when he was appointed. William Patterson, the author of the compromise in the Constitutional Convention, was 48. Bushrod Washington, appointed by Adams, was only 36 and remained on the bench until 1829. Alfred Moore was 44.

William Johnson was the first appointment made by Jefferson, and he was 33. Johnson showed his independence as a judge by not going along with the wishes of Jefferson on certain matters. At the proper time I shall read from some of the decisions of Justice William Johnson—and for this purpose and this only, that those who believe that a judge on the bench is going to be subject through bias, political or otherwise, will find that statement refuted all along the line in the history of the Supreme Court. In other words, it is the almost universal fact that men, after they went on the bench, were free from any prejudice and bias of any sort which would have been regarded as in keeping with the policy of the one who appointed them.

Brockholst Livingston was the second appointment of Thomas Jefferson, and he was 48. Thomas Todd, of Kentucky, the third appointee of Jefferson, was only 42. Joseph Story, appointed by Madison, was but 32. Robert Trimble, the only appointee of John Quincy Adams, was 49. John McLean, appointed by Jackson, was 44 and remained on the bench until the Civil War. He was appointed in 1829 and served on the bench as one of the country's greatest representative jurists. He was one of the two judges who delivered a dissenting opinion in the Dred Scott case, Curtis being the other.

James M. Wayne, of Georgia, Jackson's appointee, was 45, while Henry Baldwin, also Jackson's appointee and likewise from Georgia, was one of the greatest jurists of the court, and was 50 years old when appointed. It is true that Roger B. Taney was 59 when he was appointed. But as I go down the list only mentioning those who were appointed at an early age I find that the larger number of the men who reached that position were under 50. John A. Campbell, the famous judge of Alabama, who had achieved so remarkable a career up to the Civil War, was 41 when he was appointed by Franklin Pierce. It was prophesied that Campbell would have reached as high a plane as any man on the bench had he remained on it; but Campbell was from Alabama, and in the midst of the Civil War he felt called upon to join his own State, so he resigned and left the bench after he had served rather a brief time. But, as everyone acquainted with the history of Alabama will recall, he achieved very remarkably in his own State after he left the bench.

David Davis, appointed by Lincoln, was 47. Samuel F. Miller, of Iowa, appointed by Lincoln, was 46. Stephen J. Field was 46. I am mentioning the names around which there is a brilliancy because of their achievements, and I am indicating these as an answer to the suggestion that Parker is only in his forties. The truth about the matter is, Mr. President, that the men who have reached the highest plane in the Supreme Court are the men who have been appointed before they reached their fiftieth year, and that is one of the reasons why I would be strongly in favor of the confirmation of young men like Judge Parker, other things being equal.

There is opposition expressed because of Judge Parker's opinion. That opposition is not convincing to me. If a man is appointed to the bench without having been in a position at any time to deliver an opinion, then he will not be acceptable to some because he has not yet delivered an opinion. Some would reject a man because they do not know what his opinions would be. Some Senators might refuse to confirm because of a lack of experience, because there is no chance to know what the man would do on the bench, and therefore in their judgment he is not suited for that reason. That objection would have precluded and excluded Story. That objection would have excluded Morrison R. Waite. Morrison R. Waite was appointed to the Supreme Bench without ever having appeared in the Supreme Court to try a case. In fact, he had only been admitted to the Supreme Court the year before he was appointed, and yet Waite, without previous experience, at the time of his death had reached a very high plane, which would do credit to the position of Chief Justice.

John M. Harlan, of Kentucky, but 44 years of age when he was appointed, had had no experience at all, had never practiced in the courts. He was appointed to the bench and, as everyone here knows, reached a position of universal approval as one of the country's greatest judges.

I do not believe that the mere statement of fact that Parker's opinions are not known is at all a legitimate objection against him. On the other hand the suggestion that we should reject a man because he has expressed an opinion which opinion might not coincide with our view, is about as weak as the position that he has no expressed opinion and, therefore, should be rejected. Mr. President, living in a country like ours, so subject to public criticism as we are, where everybody is discussing public questions more or less, it is inconceivable that a judge will not on some occasion deliver an opinion that may be refused by certain groups. A judge to be fit to sit on any bench must be fearless in the expression of the opinions which he might hold. The very fact that he is fearless and will express his views in accordance with the law on the basis of the facts and evidence submitted above everything else makes him fit for the bench. If he will, from a sense of fear, a lack of courage, or because of persuasion or influence of any kind, withhold an opinion that he himself entertains, I would not be free to vote for him, because that kind of man could be controlled and swayed by any powerful influence that might be brought to bear upon him.

So, too, any mature man who may be appointed to the bench who has had any experience, will doubtless have expressed an opinion on this or that subject which will not be entirely acceptable to all classes.

Mr. President, I long ago learned that it is utterly impossible to please everybody; I have learned that what pleases one group displeases another group; and perhaps the feeling of displeasure in the one case grows out of the same act which causes the sense of pleasure in the other. It is clearly impossible for any public man to please everybody. I think he would be a very foolish individual who should undertake to chart his career by attempting to please everybody. A judge on the bench must be deaf to all influences outside of the consideration of the justice in the case. If a man at some time shall have expressed an opinion on this or that case, that opinion might be a suggestion as to what his inclination would be when placed in a different situation. What I desire to know is: Is the appointee able; does he comprehend; has he discernment; is his judgment sound; does he respect the law; will he refuse to be influenced by this or that organized effort on behalf of some selfish enterprise? What I wish to know is whether the candidate is a man of ability, of integrity, of honesty, of large wisdom, of keen discernment, of judgment, with devotion to what is patriotic, alert in securing the rights of all concerned, impartial in his decisions, basing his judgment upon the facts in the case before him within the law. Those characteristics being manifest in his make-up, no kind of influence from any quarter would swerve him from doing what I thought was my duty merely because it might be displeasing to this or that group.

I am of the opinion, from what I can glean from the conduct of Judge Parker, that he is a man of ability, sound judgment, fair dealing, and of rather keen discernment. Nothing that has been said here against him has gone to his character or to his fitness, but has been confined to his attitude in regard to certain questions.

Mr. President, that consideration opens up a field which it is difficult for one fully to comprehend. How far is a judge to go in exercising what we call latitude in his attitude toward this movement or that movement? If the so-called "yellow dog" contract, even though it had not been held valid by the Supreme Court of the United States, were within the law, if Judge Parker had not had the decision of the Supreme Court before him as a precedent, but had decided the case within the terms of the law, even though the law were such a one that I would not in the outset have favored it, I would not be here to criticize him on the ground that he did not exercise the latitude of going outside the law and pronouncing the contract, which was recognized to be within the law and to be legal, as being an unconscionable contract, and holding, therefore, that he would not be bound by it.

I repeat that even though Judge Parker had not before him the Supreme Court decision, which, of course, precluded any decision other than the one he rendered, I should not hold him responsible for deciding within the law, in accordance with the terms of the law, although had I been making the law in the outset I might have been strongly opposed to such a contract, as, indeed, I would have been.

Mr. President, on the particular point of the controversy which took place in West Virginia, I wish to say that all my sympathies are against the final decision. But judgments can not be rendered upon mere sympathy. In the first place, I am thoroughly in sympathy with the right of labor to organize, and certainly I should maintain the right of labor to organize in West Virginia in the coal industry, for I, with others, have sat with the Interstate Commerce Committee and have listened from day to day and from week to week and from month to month to the hearings in the coal controversy growing out of a dispute between the States north of the Ohio River and the States south of the Ohio River.

The miners in Ohio are strongly organized; there is not any group of labor which is better organized than are the Ohio mine workers. They have organizations of many years' standing. The members of the unions own their homes; they have their schools; they are, in fact, the best citizens of our State. Unionized labor north of the Ohio River receives about $2.50 a day more than does labor south of the Ohio River, which is not organized. The result is that from territory south of my State coal may be shipped a greater distance across my State and delivered to the lake markets much cheaper than the coal which is mined in my own State, the difference being occasioned by the increased cost of mining in my State due to the higher union wage as contrasted with the lower nonunion wage in the States to the south. So interest would naturally be to seek to have labor south of us put on the same plane as is the labor of Ohio; if I had no other interest than a mere selfish interest, it would be that.

On the other hand, I believe it is the judgment of modern economists that it is sound economy to pay the higher wage. The measure always is purchasing power, and 80 per cent of the purchasing power of our country is labor. In the degree that we increase the wage of labor we increase the purchasing power. So I think it is sound economy to favor a higher scale of wage. For that reason my sympathy would naturally be with those who desire to unionize labor in West Virginia.

I mention this because I do not want anyone to take it that my position in this particular instance or in any other would be unfriendly to union labor, for nobody can gainsay the tremendous accomplishments, the wonderful achievements of unionized labor. Everybody must recognize them.

Mr. WALSH of Massachusetts. Mr. President, will the Senator from Ohio yield to me?

The VICE PRESIDENT. Does the Senator from Ohio yield to the Senator from Massachusetts?

Mr. FESS. I yield.

Mr. WALSH of Massachusetts. I can fully appreciate all that the Senator has said, for he comes from a large, industrial State, which has very advanced and progressive legislation on questions relating to the working class. I ask the Senator if he is aware of the fact that the difference which he pointed out in the case of the wage paid miners in the territory south of the Ohio River compared to wages paid miners in Ohio is ultimately going to lead to the industrial disadvantage of his State, and to the advantage of those States that are producing where labor is cheaper?

Mr. FESS. It has already reached that stage.

Mr. WALSH of Massachusetts. I ask the question because of the experience of my own State. The Senator will recall that during the tariff debate statistics were presented showing that shoe workers in certain sections of the country received wages 20 per cent less than those paid the shoe workers in the Eastern States, with the result that there has been a steady diminution in the production of shoes in the East, and that section of the country where the wages are 20 per cent less has advanced its production of shoes. The same situation exists in the textile industry. So I can very naturally understand why the Senator, regardless of the human appeal, one with which I know he is in sympathy, would, even from the standpoint of State interest, be most anxious for the spread of organized labor, to the end that we may have uniform standards of wages and hours of labor and of labor conditions throughout the country.

Mr. FESS. I thank the Senator for his observations. The geographical situation, with just a river between us, where through organized labor wages north of the river are $2.50 a day higher than just south of the river, where labor is unorganized, makes it impossible for our mines to go ahead and compete with those mines. In other words, our mines close down. There is a better situation now than there has been, but it is still not satisfactory; and I am mentioning that to disprove the suggestion that my position here might be due to a lack of sympathy either with the economic problem or with the human problem. It is not that. If I were influenced by that consideration, I should probably find fault with the decision of Judge Parker; but here is the fact:

Judge Parker ruled in accordance with the terms of a contract. If I had been making that contract, I should have advised against it; and while I do not say I would not have made it because it might be that labor, so needful of employment, might agree upon certain terms such as are in the contract in order to get work, and I would have sympathy with their being able to relieve that situation of the contract—yet the fault is in the contract itself, and not in the judge who interprets the violation of the contract. I state again that if I were a judge on the bench, with a violation of a contract presented to me, and the violation were without question, the mere fact that it would say, "That contract is unconscionable, and I would not have made it" would not justify me as a judge interpreting it in ignoring the contract.

Now a lot of people want us to ignore it; but the minute we go beyond the terms of a legal instrument and are guided by what we call humanitarian interest—a flexible term, an indefinite term—we have no limit. What is to be the limit of our interpretation if we say that the decision should not be governed by the terms of the contract?

So I can not fault the judge for having thus decided a case which was within the terms of the contract, although the contract itself involved a bad situation—I mean, it seems an unjust one; I do not mean an illegal one, but unjust and not consistent with wise policy.

Mr. WALSH of Montana. Mr. President——

The VICE PRESIDENT. Does the Senator from Ohio yield to the Senator from Montana?

Mr. FESS. I do.

Mr. WALSH of Montana. Did I understand the Senator correctly that in his judgment such a contract is an unconscionable contract?

Mr. FESS. I stated that I thought I would not enter into such a contract, and yet it might be that a situation would arise where work was so necessary that I might make that sort of a contract rather than be out of employment. I am trying to get the situation that existed in West Virginia.

Mr. WALSH of Montana. But the Senator said that if he were a judge, although he would regard the contract as unconscionable, he would feel obliged to enforce it. I desire to remark that that question was presented yesterday by an inquiry addressed to the Senator from Idaho [Mr. BORAH] by the Senator from Illinois [Mr. GLENN], as to whether, if one entered into a contract for the construction of a building, and some one else endeavored to dissuade the owner of the property from carrying out his contract, an injunction would not be a proper remedy to enjoin him from thus interfering.

Of course everything depends upon the character of the contract. The Senator may not be aware of the fact that courts of equity refuse specifically to enforce contracts that are perfectly legal if they are unconscionable. That is to say, if a man agrees to sell a piece of property for a price that is wholly inadequate, a court of equity will not enforce that contract. So, although this particular contract may be a perfectly legal one, if the Senator is right in the view that it is an unconscionable contract, then an injunction to prevent its violation ought not to be issued, under well-settled rules of equity.

Mr. FESS. Mr. President, I have used the word "unconscionable" because it is the word that has been employed in the debate. I have also used it in the sense that I think that sort of a contract should not be required.

Mr. WALSH of Montana. Let me remark that if the action were at law, the court would be obliged to say to the jury, "Much as I deplore entering into a contract of this kind, it is your duty to return a verdict in favor of the plaintiff who sues upon his contract"; but if he were sitting as a court of equity, called upon specifically to enforce it, he would say, "Although this contract is in a strict sense legal, and if tried in a court of law I should be obliged to sustain it, I will not grant specific performance of this contract, nor will I enjoin anybody from attempting to break it."

Mr. FESS. I am quite certain that the Senator from Montana, who is rightly regarded the keenest lawyer with us, would not use much latitude in handing down a decision that would violate a contract or would excuse the violation of a contract if it were brought before him in the case. It is that situation which I have in mind, and it is that consideration on which I am trying to get the reaction of my own mind toward this particular case of Judge Parker. I assume that his statement that as the judge of a lower court he was not free to do other than the upper court did would be conclusive; but I am saying that even though he did not have the upper court as a guide, it would seem to me that he would be required to stay within the terms of the contract when a violation of it was brought to his attention.

Mr. BRATTON. Mr. President——

The VICE PRESIDENT. Does the Senator from Ohio yield to the Senator from New Mexico?

Mr. FESS. I yield to the Senator.

Mr. BRATTON. The Senator from Ohio, a few moments ago characterized a contract of the character under discussion as an unconscionable one.

Mr. FESS. I will say to the Senator that that was simply repeating a term used by the Senator from Idaho.

Mr. BRATTON. Very well. Quite aside from what the Senator from Idaho may have said, does the Senator from Ohio

regard such a contract as being unconscionable—that is to say, out of harmony with sound public policy?

Mr. FESS. I think that any effort to prevent the organization of labor on its own behalf, for its own betterment, is not a wise policy. I think it is an unwise policy.

Mr. BRATTON. I agree with the Senator when he goes that far; but, beyond that, does the Senator regard it as an unconscionable contract—that is to say, one that contravenes sound public policy?

Mr. FESS. I would prefer not to go to the extent of saying "unconscionable." I would not want to go further than saying that it is not wise economy, either from the standpoint of labor itself or from the standpoint of the employer, from the standpoint of industry. I think the high-wage scale is preferable to the low-wage scale, even for industry, to say nothing about labor. That is, a wage that is below the level necessary to sustain the proper standards of life is bad economy.

Mr. BRATTON. I agree with the Senator; but I go a step farther and say that, in my opinion, such a contract, executed under the pressure and force of circumstances which concededly attend the execution of this sort of an agreement, is unconscionable in the sense that it is completely at war with sound public policy. The Senator from Ohio may be unwilling to go that far in his condemnation of a contract of this character. I have no hesitancy in doing so. I think it is unconscionable, because it is entirely out of harmony with sound public policy of the twentieth century. Consequently, it seems to me that a court of equity should be loath to extend its arm of protection to those who seek the enjoyment of the fruitage of a contract. That, it seems to me, is the broad, social and industrial question that should concern us in connection with this confirmation, and quite aside from it.

Mr. FESS. The Senator will agree with me that the term he is using, "unconscionable contract," is a term that is not limited. It means one thing to one person, and another thing to another. There are no boundaries; and if we lift the requirement of a decision reached in the light of the facts beyond the terms of the contract, there is absolutely no limit as to what will be the basis of our decision.

Mr. BRATTON. I agree with the Senator. The generally accepted interpretation of the term "an unconscionable contract" is one that is executed or negotiated under circumstances so unfair and unjust as to shock the conscience of the judge or tribunal passing upon it. In that sense this class of contracts appeals to me as being unconscionable; they are so unfair, and negotiated under such oppressive circumstances, as to bring them under condemnation.

Mr. FESS. I should not want to be guided by such indeterminate considerations in making a decision. I should not wish to deny confirmation to an appointee on the ground that he did not do what some one might think it would be more human if he had done. I should not do that for many reasons; and we have some very striking examples of mistakes that we have made in the past because of that.

The Senator will recall that Washington appointed John Rutledge as an Associate Justice of the first Supreme Court, and then later Rutledge resigned and went back to the practice of law in South Carolina. When John Jay went over to Europe to make the treaty that bears his name, a vacancy was ultimately created, and John Rutledge was appointed to take Jay's place. Rutledge had made a very bitter attack upon the Jay treaty, and the matter was brought to the attention of Washington, with the statement, in substance, "You are appointing a man who has bitterly attacked the treaty in which you are so much interested, and he has not only done that but he has reflected upon you." The Senator will recall the famous observation that Washington made on that representation—that what he wanted was a man of judicial poise, of independent judgment, who would reach conclusions based upon the data submitted, and he added that he would not withdraw his name.

The Senator will recall that the Senate was somewhat disappointed, if not angered, and Rutledge was rejected by this body. Any Senator who knows the career of Rutledge would recognize the loss to the country on account of that rejection by this body because of an opinion he had given out of court. I do not think that is a safe rule to pursue.

Mr. BRATTON. Mr. President, the Senator's narration of that incident of history carries with it his usual erudition. But quite aside from this confirmation, the point I have in mind is to elicit the views of the Senator with reference to the validity of these so-called "yellow dog" contracts, in view of twentieth-century conditions. I regard them as being wholly out of harmony with present-day conditions. That is the broad principle which I desire to direct to the attention of the Senator from Ohio. I inquire whether he thinks they are so fundamentally out of harmony with present-day conditions that courts of equity should be reluctant, if not entirely unwilling, to extend their protection to those who desire to enjoy the benefits under them.

Mr. FESS. I would say to the Senator, in reply to that, that we have two separate functions here. One is as the law-making function; the other is our function as an interpreting body, and if a type of contract is unwise it should be held unwise in the law, and the court, therefore, could interpret the contract within the law. If the type of contract, I agree with the Senator, is not the type that should be recognized, that should be a matter of legislation. Then the court could easily pass on any violation of it. In other words, in the language of John Marshall, we have no other course than the narrow path of following the law as it is laid down.

Mr. BRATTON. I seriously question whether Congress has the power to declare such a contract illegal as contravening public policy, unless it has some connection with interstate commerce. The validity of such a contract depends upon whether it is in harmony with sound public policy. If it is out of harmony with sound public policy, legislation is unnecessary, because every court in the country should strike it down for that reason alone.

It is that general, abstract question which I am calling to the attention of the Senator from Ohio, and in connection therewith, I have no hesitancy in saying to him that I regard such a contract as fundamentally wrong. It contravenes sound public policy. It violates social conditions, civic conditions, industrial conditions, of the present day.

It seems to me that the Senator from Ohio and other leaders in molding thought in this country should take a stand upon that question, and either approve or disapprove this kind of agreements.

Mr. FESS. Mr. President, I repeat that is the province of Congress, and would be a matter of legislation. It seems to me that the only safe course to take is to keep the court within the terms of the law, and then there can not be any charge of usurpation.

Let me state, in further reference to the danger suggested by this colloquy, that every now and then some one will be attacked for an opinion he has expressed or because of some political position he has taken. In the case of John Tyler, who came into some disfavor with the party that elected him, every single nominee to the Supreme Court submitted to the Senate by him was rejected. Yet he named men of very high repute.

The same thing was true in the case of Millard Fillmore. He submitted the names of three different persons for the Supreme Court, all of which were either postponed or withdrawn, to the great loss of the country. The same thing was true in the case of Andrew Johnson, because of the spirit of anger existing at that time.

It is very significant that E. R. Hoar, a former Attorney General, was nominated to the Supreme Bench, and because he had thought that the impeachment of Andrew Johnson was unwise and had made a statement to that effect, together with some other things he had said, he was rejected.

There is the case of John J. Crittenden, universally recognized as one of the country's greatest statesmen, the author of the Crittenden compromise of Civil War times. John Quincy Adams named him away back in 1829, but he could not pass this body. He was one of the leading figures in Civil War times, and Lincoln was especially anxious to honor him by putting him on the bench, but because of some statement he had made about what we call the compromise between the North and the South the rabid abolitionists of New England, as well as those of Ohio, were against him, and Crittenden never was on the bench.

Mr. BRATTON. Mr. President, will the Senator yield further?

Mr. FESS. I yield.

Mr. BRATTON. I want to make clear to the Senator my position in the discussion he and I have enjoyed. I was endeavoring to discuss the question in the abstract, quite aside from the confirmation of the nominee in question. I was not now advocating that the Senator should vote against the nominee on account of the opinion rendered in the so-called Red Jacket case. What I was endeavoring to do was to dissociate the discussion from the concrete question before us and confine it to the general policy of contracts of this class—that is to say, whether they are at variance with public policy of to-day.

I do not want the Senator to think that I was urging upon him the wisdom of voting against Judge Parker because of the particular opinion rendered in question. The Senator will form his conclusion about the confirmation and I will form mine. Whether he takes that opinion into account is a matter for him to determine. Whether I take it into account is a matter for

me to determine. I simply wanted to make clear to the Senator that I was endeavoring to discuss in a frank way the matter as an abstract question in relation to our social and industrial conditions of to-day.

Mr. FESS. I thank the Senator. The Senator knows that I recognize him as the type of man who does his own thinking, and frankly expresses himself. I have great admiration for his legal opinions, as he knows. I thought that when he was putting the questions to me, there was an effort to undermine my decision to vote for Mr. Parker, on the ground that he was not fitted for the place.

Mr. President, there is another phase of this question which I think must not be overlooked. It is a phase which might create some adverse criticism, but I think it must be brought out. I have no complaint of anyone who frankly and freely expresses opinions with which I do not agree. This forum is the place for free and independent discussion, as well as voting, and it goes without saying that under the mental organization of the race we will not all think alike. We will differ, and honestly differ.

There never has been a time when there has not been criticism of the independence of the judiciary. That criticism was begun at the time of the creation of the Supreme Court. The truth about the matter is that our system is unique. There is none other to-day that is like it, nor was there ever one that was like it.

Bryce made the statement that in the fact that every government has legislative, executive, and judicial functions, all are alike. The United States in that sense is not different from Turkey of old. A republic is not different from a despotism. Where we are different is not that we have the three functions that are exercised, but that we have them all separate from one another. They are independent. Ours is the only Government in existence, or that has ever been in existence, which recognizes those three coordinate departments independent in their functions, and yet interdependent in their organization.

Of the three, the judiciary is naturally the weakest, because the legislative has the purse. There is no such thing as supporting the judiciary without the legislative approving. The executive is the enforcing power, and has the sword, but the judiciary has neither the purse nor the sword. It is independent in arriving at its decisions, but that is the only way it is independent. It does have judgment. In order that that judgment might be unbiased it must remain independent of the other two. Some Senators think it too strong because it is appointive and not responsive to election, because its members hold for life and are not subject to a limited tenure.

Some would change the Supreme Court by making the judgeships elective and fixing the terms. That would be un-American. That would be a violation of every fundamental principle announced in the Constitutional Convention. The mere fact that this third department, weakest of the three, is independent of pressure from any source and is permitted to exercise its judgment with little respect to manufactured clamor from whatever body or whatever source, brings it into the criticism of certain groups of people. When the nomination of Justice Hughes was presented to this body there was universal concession that his integrity, ability, honesty, fairness, and keen discernment were unquestioned. But it was said that his attitude on certain questions was not satisfactory and there grew up here a storm of opposition. That attitude must have a source somewhere, and that source is against the judiciary of the country. It is a socialistic movement. In that debate a famous socialist author was read from for two and one-half hours in this Chamber, and I must assume that the Senator who read the socialistic predictions had more or less sympathy with what he was reading.

Now we have the same thing again as to Judge Parker. Is he the objection or is it the court that is the objection? Let us see. On the 22d day of this month a Washington newspaper, which has gone out of its way to undertake to defeat this confirmation, published an editorial. It has carried on editorially a consistent organized effort to minimize the character of Parker and to encompass his defeat. Every day an editorial is carried. On the 22d day of this month there was an editorial closing with this statement:

> An open Senate debate would destroy further the "hush-hush" that has protected the Supreme Court. It would focus more light upon that all-powerful institution.

Now, hear me, Senators! I am reading:

> Parker is an incident. The Supreme Court is the issue.

So spoke the sheet that has been carrying on the fight against the confirmation not only of Parker, but of Hughes. I say again it is no use to blink the facts. The fight is against the judiciary, the independent, courageous group of men who sit on the bench and decide in the light of the facts within the law. If they were other than independent they would not be fit to be on the bench. The mere fact that any man would yield to any sort of pressure from any sort of organized propaganda would be the strongest reason for me to vote against him, because we do not want that kind of men on the bench.

In looking around to find some objection to Mr. Parker that might be effective, there has been picked up the labor contract. That offers a good opportunity; it offers the occasion. If we strike down a nominee whose honor, ability, and integrity are not questioned, for any other reason than that he is unfit, then we proceed, in my judgment, to assault the broad bulwark of our liberties in this country. I am deeply concerned as to whether headway is going to be made in that direction. It was recognized at once that if the labor people could be stirred up it would be a splendid thing to do as a means to encompass what is trying to be done. I have it within my own information. A friend of mine high up in labor circles made an inquiry of me as to the reason for this propaganda, stating that he was being importuned to join the effort to defeat Judge Parker, and wanted to know what it meant.

Mr. BLACK. Mr. President——

The VICE PRESIDENT. Does the Senator from Ohio yield to the Senator from Alabama?

Mr. FESS. I yield.

Mr. BLACK. I understood the Senator to say several times "they" with reference to seeking an effort to find something against Judge Parker. It may be that the Senator has said in his remarks heretofore to whom he was referring when he said "they." I assume he refers to the ones who started the opposition. I am interested to know if the Senator has said who started the opposition and to whom he refers when he says "they."

Mr. FESS. Mr. President, I am referring to the effort to break down the present American judiciary as it now exists, and I need not attempt to specify names in order to bring that out. The Senator himself will be able, if he reads the papers, to ascertain who is thus assaulting the Supreme Court. I have just read one statement that it is the Supreme Court which is the issue. If the Senator would say that or if I would say it, it would immediately be asserted that we were trying to avoid the issue on behalf of Mr. Parker. But this is some one who is opposed to the confirmation of Judge Parker, and it said, "Parker is an incident. The Supreme Court is the issue."

Mr. BLACK. If the Senator will yield further just a moment, I do not know that I am at issue with the Senator in many things he has stated; but I understood the Senator to refer to the fact that somebody or some group or some individuals were responsible for seeking to get the labor people arrayed against Judge Parker and that they were responsible for trying to get other people against him. I am not asking for the names of those to whom the Senator refers. I am simply trying to find out if he has definitely in mind to whom he referred when he said "they"?

Mr. FESS. Yes. I have a great number of letters from different sources.

Mr. BLACK. From what sources?

Mr. FESS. Different sources—in labor, and in an organization known as the Association for the Advancement of the Colored People. I have many letters from those people.

Mr. BLACK. To which one was the Senator referring when he said "they" are trying to get labor interested in order to oppose Judge Parker? That is what I want to know.

Mr. FESS. If the Senator will permit me to proceed——

Mr. BLACK. I am perfectly willing for the Senator to proceed if he does not want to state to whom he referred when he said "they."

Mr. FESS. I referred to the people who are attempting to encompass the defeat of the confirmation of Judge Parker. They are numerous. They are not only here in this Chamber, but they are outside of this Chamber and they are throughout the country.

Mr. BLACK. I feel sure the Senator does not mean that anyone in this Chamber has sought to stir up the labor people against Judge Parker or that the representatives of the labor unions endeavor to get them stirred up?

Mr. FESS. Oh, no.

Mr. BLACK. The Senator does not refer to them when he says "they"?

Mr. FESS. I refer to Senators when I am talking about the efforts to defeat Judge Parker, of course. In the discussion of Judge Hughes, a Senator on this floor said in effect, and he was honest in saying it as he always is, that "some of us, as you know, are not entirely satisfied with the manner in which the Supreme Court is operating." That was an honest statement of the fact and I do not criticize him for making it. I am simply pointing out what the issue is.

If I were asked to ascertain why this or that organization is against the confirmation of Hughes and the confirmation of Parker and probably the confirmation of any man whose name may be submitted who might not suit their particular standard, it would not be expected that I would undertake to enumerate all the names and I do not think the Senator would desire that I should. In other words, Mr. President, it certainly is not unbecoming in a Senator to attempt to make a statement of a situation here where we are discussing a fundamental principle involving the welfare of the Nation.

Mr. OVERMAN. Mr. President——

The VICE PRESIDENT. Does the Senator from Ohio yield to the Senator from North Carolina?

Mr. FESS. I yield.

Mr. OVERMAN. There is all sorts of talk of a sinister nature going on here. A leading dry came to my office and said he wanted me to investigate the question which he was going to suggest to me. He said, "The wets are trying to defeat Judge Parker because he is a dry, and as this question is coming up they want to name a man to the Supreme Court who will vote against the prohibition law. They want somebody on the Supreme Bench who is opposed to the eighteenth amendment." I said, "Have you any proof of that?" He said, "I have no direct proof. I can not say how it is, but I know it is so, and it is going on all the time." I said, "I am not going to undertake to investigate anything until there is some proof submitted." That is the way it is with many of them. They are not able to submit anything definite and specific. He said that he knows it is going on. He is a prominent man. He said, "The wets are trying to beat Parker."

Mr. FESS. Mr. President, I had not heard that suggestion, and while I have not heard it I would not be surprised if it were true. [Laughter.]

Mr. ASHURST. Mr. President——

The VICE PRESIDENT. Does the Senator from Ohio yield to the Senator from Arizona?

Mr. FESS. I yield.

Mr. ASHURST. I have listened, as I am sure we all have, to the able speech of the Senator from Ohio, with no small degree of admiration for the disclosure of the wide reading of history on the part of the Senator; but, altogether, the able Senator is too drastic in his characterization of those Senators who do not see fit to vote for the confirmation of Judge Parker. Let me say to the Senator that during my service here I have not only voted for but I urged, in my humble way, the confirmation of Mr. Justice McReynolds, Mr. Justice Brandeis, Mr. Justice Clarke, Mr. Justice Sutherland, Mr. Justice Butler, Mr. Justice Sanford, and Mr. Justice Stone; and to me one of the exquisite incidents of my senatorial career was when I was afforded an opportunity in executive session to speak for five minutes urging the confirmation as Chief Justice of William Howard Taft. The Senator will also doubtless recall that I said if I were the only Senator to vote for Mr. Charles Evans Hughes I would stand by my guns and would vote for him.

I voted for these gentlemen because they are men of intellect, learning, character, judicial temperament, courage, capability, and experience. Now, when a nominee who has neither great character nor great courage nor great learning is set before us, and we are asked to put the seal of our approval upon him for that high place, it is suggested by the Senator that we are trying to destroy the United States Supreme Court because we do not swallow weaklings.

Mr. FESS. Mr. President, I regret that the brilliant Senator from Arizona closed his statement with the sentence he used. Most of what he said was admirable, and just what I would expect from him. I would expect him to vote for all the confirmation of all the Supreme Court justices mentioned by him, and I would have been greatly surprised if his vote had been against Mr. Justice Hughes, as he knows I would. I regret he has made the statement that he will refuse to vote for confirmation in this case because he considers the nominee a weakling.

Mr. ASHURST. No one is fit to sit as a justice of the United States Supreme Court, where are involved the destiny of 120,000,000 people and the ever-present and complex propositions of State and national sovereignty, who upholds the "yellow-dog" contract.

Mr. FESS. Mr. President, that would be a very persuasive statement, perhaps, were it not that the same kind of statements were made against Mr. Justice Story when his nomination was before the Senate for confirmation, when it was alleged that he had had no experience, that he was a mere boy. The same sort of argument was made against E. R. Hoar, whose nomination was rejected by the Senate. If Judge Parker shall go on the bench, as I assume he will, I am quite certain that the time will come when the Senator from Arizona will feel like making an apology for the statement he has made about him, just as in the past critics of former nominees have apologized for their criticism.

Mr. ASHURST. Mr. President, of course, if it shall ever be discovered that I am in error, the Senate knows that I will not only promptly but gladly apologize.

Mr. FESS. Mr. President, there is another line of discussion which I wish to follow, in conformity with the statement I made a moment ago, that the Supreme Court has been the subject of almost constant criticism. When that court was originally created doubts were expressed as to the wisdom of its creation. When it started on its career it was feared by such leaders as Jefferson, who was afraid of its powers. Those, however, who say that Jefferson opposed the Supreme Court on the ground that the court had pronounced certain laws to be unconstitutional are mistaken. That statement is made because of the famous Kentucky resolutions, which were written by Jefferson, as the Virginia resolutions were written by Madison, but those making it overlook the fact that Jefferson commended the Supreme Court for declaring constitutional the embargo act which was passed in 1809 during Jefferson's own administration. They also overlook the fact that Jefferson criticized the Supreme Court because it would not declare the alien and sedition laws unconstitutional. The Senate will recall that Jefferson also criticized the Supreme Court because, in the famous McCulloch against Maryland case it declared the national bank act to be constitutional. So those who are charging that Jefferson expressed fear because he was afraid the Supreme Court would declare a law unconstitutional, as it had done in the Marbury case in 1803, are at fault, because Jefferson was one of the strongest proponents of the right of the judiciary to declare a law unconstitutional.

There were criticisms of the Supreme Court in the early days of our history on various grounds, and many efforts were made to curb its power. There were legislative efforts to restrict the court. An attempt was made to repeal the twenty-fifth section of the judiciary act which was passed in 1789. Efforts continued from 1821 to 1831 to require each judge to deliver his opinion separately and not to join with the other judges in a joint opinion. The question arose whether or not such action on the part of the Congress would be constitutional. The reasons which were given for requiring separate opinions were three: First, that it would open the individual judges to impeachment; second, that it would subject the decisions of the court to protest by Congress; and, third, it would make the Senate an appellate body with a supervisory power over the court. Those are some of the legislative proposals urged to curb the power of the Supreme Court in the early days of our history. All failed of favorable action.

An effort was also made to require the concurrence of all the judges in order to declare a law unconstitutional. In 1823 an effort was made to require that seven judges—which at that time was the entire membership of the court—should concur before a law enacted by Congress could be set aside. That proposal was not acted upon. Then, in 1825, an effort was made to require that five out of the seven judges should concur before a law passed by Congress could be declared unconstitutional. That proposal was likewise not acted upon. Later an effort was made to require a majority to concur in such a decision, which, of course, is the practice to-day. The significance of these proposals lies in legislative effort to curb the court.

Mr. President, I have thought—and I have expressed the idea frequently—that the Supreme Court might properly consider adding another rule to those governing its procedure. The court has a rule that it shall always give due credence to the opinions of the legislature in cases affecting the validity of statutes. The court has another rule that there shall be a full attendance in the hearing of cases affecting the constitutionality of laws. I have wondered why the court did not add another rule, requiring the concurrence of a certain number in an opinion declaring a law to be unconstitutional.

The people of Ohio placed in their constitution a provision that a law could not be set aside as void by its supreme court unless all the judges of the court, save one, concurred. It has been urged that if a law were passed making such a requirement it would be unconstitutional. I do not know as to that but am of the opinion that it is true; but, on the other hand, it has been urged that the court itself should not adopt such a rule because of the fact that it would allow a minority to control the court on questions affecting the constitutionality of laws. Whether or not that is a valid objection is open to discussion. I am merely mentioning the efforts which have been made to curb the power of the Supreme Court.

Several amendments have been offered during our history to take away from the court the power to declare a law unconstitutional.

Another line of decisions that has produced considerable controversy has to do with the power of the court to declare State statutes unconstitutional. I have before me a list of five separate efforts on the part of State legislatures to deny the court the power to declare State laws unconstitutional. Those efforts extended from 1820 until about 1830. During that period of 10 years there was scathing criticism of the Supreme Court because of its decisions declaring State laws to be unconstitutional. In Ohio in the Osborn case the feeling reached almost the point of riot; in New York, in the Steamboat case, it almost reached the point of nullification; there was strong feeling likewise in the Cherokee cases in Georgia and in one or two other States, especially in Kentucky, where the bankruptcy laws were operating on the land laws. During that 10 years the Supreme Court was under constant and bitter criticism. But in spite of it the line of decisions was unbroken and uninfluenced by it.

It might be of interest to the Senate to know that from 1789 to 1924, 49 different Federal laws were pronounced unconstitutional by the Supreme Court of the United States. Of the 49, only 11 created any particular interest in the country, but during all of that time there was more or less criticism of the court without results on the court's integrity or its independent judgment.

The greatest criticism grew out of the power of the Supreme Court to declare a State law unconstitutional and the power of the Federal Supreme Court to overrule the supreme court of a State. The feeling against those powers of the Supreme Court was very bitter at times and reached almost the proportions of a storm.

As the Senators who are conversant with our history will recall, that fierce opposition ran up until 1832, when Calhoun proposed that his State nullify the tariff law. It just so happened that Jackson was then the President, and he was quite stirred if not offended over the attitude of Calhoun. Through Jackson's efforts, first expressed in his Attorney General's report on it—I think the Attorney General was Livingston, I am not sure; it is one of the strongest arguments for constitutional supremacy I have ever examined—through the efforts of Jackson, that agitation ceased, and we had nothing more of such agitation against the Supreme Court on that score until the days when slavery came to be discussed as a national issue. Those conversant with the times will agree that we never in our history reached such an acute stage of the Supreme Court as in the discussion of the question of slavery, especially the Dred Scott decision in 1857, and the years just preceding, as well as those following that date.

When John Marshall died in 1835, and Jackson was called upon to appoint a successor, there were many very great lawyers who were in the minds of the public. The one whom Jackson desired most to appoint was Roger B. Taney. Taney had been rejected by the Senate on another occasion, due, as Senators will remember, to opposition to his action as Secretary of the Treasury having obeyed the orders of President Jackson to remove the funds from the National Bank to the 89 State banks. That was regarded as an unconstitutional act by Calhoun and Webster and Clay, and the result of that opposition was the defeat of the confirmation of Taney; but that was not for the Supreme Bench. When, in 1835, Marshall died, Jackson exercised his usual courage, recognizing the brilliant legal ability of Taney, although he was 59 years old at the time, and appointed him to fill the vacancy; and then the storm broke. Probably at no time in the Senate Chamber was there such a debate in opposition to a confirmation. That debate was joined by Webster, Clay, Calhoun, and men of their type; and when the vote came Taney was confirmed, but not by a very large majority.

Mr. BORAH. Mr. President, will the Senator yield?

The VICE PRESIDENT. Does the Senator from Ohio yield to the Senator from Idaho?

Mr. FESS. I yield.

Mr. BORAH. Upon what grounds did Webster and Clay and Calhoun and others oppose Taney? It was not on the ground of his personal disqualification, not on the ground of his lack of ability as a lawyer, not on the ground of his want of integrity. What was the ground upon which they opposed him?

Mr. FESS. Their specific objection was that he had performed an unconstitutional act by transferring the funds from the National Bank to the State banks as Secretary of the Treasury.

Mr. BORAH. In other words, Webster and Clay and Calhoun disagreed with Taney as to the proper construction of the Constitution of the United States, and they opposed him?

Mr. FESS. I think so.

Mr. BORAH. Does the Senator think that Webster and Clay and Calhoun were assaulting the Supreme Court of the United States as an institution?

Mr. FESS. I think that Webster and Calhoun and Clay were acting from passion of hatred toward Jackson for his fight against the national bank, and I think the Senator will agree with me.

Mr. BORAH. No; I do not, because when the time came that Mr. Jackson took the position that he did with reference to the act of South Carolina, the hatred, if it arose over that incident, had arisen; but Mr. Webster supported Mr. Jackson loyally in that matter.

Mr. FESS. The Senator will recall that I am accurate in this statement—that these three men, because of this conduct, secured the censure of President Jackson; and through the power of Senator Benton in 1837—that was two years after this—that censure was expunged from the records of the Senate.

Mr. BORAH. That is true; but what I am contending is this: Webster and Clay had a different view with reference to the proper construction of the Constitution, the proper authority, and the proper functions of the Chief Executive, what his powers were under the Constitution. They had a certain view with reference to the construction of the Constitution, and Jackson took a different view. I have no doubt in the world but that Jackson took his view with just as much sincerity as Webster and Clay; but I refuse to believe that Webster or Clay, in opposing the confirmation of a Chief Justice, were actuated by no other feeling than personal hatred.

Mr. FESS. I think the Senator will have to admit that the dominating motive of these three men was hatred to the administration as conducted by Jackson. In all the debates that fact comes out, and they are criticized for that attitude to-day just the same as men are criticized like Ben Wade, Charles Sumner, Joshua R. Giddings, and John P. Hale for their bitter attack on Taney for the Dred Scott decision. It is certainly without question that their attack was largely due to their personal animosity toward Taney.

Mr. BORAH. Mr. President, I have read Mr. Webster's speeches upon those subjects many, many times. I think the Senator will agree with me that no speeches upon a subject about which there was such intense controversy were ever so free of personal attack as were Webster's speeches upon that subject.

Mr. FESS. That is true.

Mr. BORAH. Mr. Webster spoke at all times in the most respectful terms of Jackson; and if there was that hatred which would guide his conduct in a great emergency, he certainly did not disclose it in his speeches. Those were days in which men differed and remained gentlemen.

Mr. FESS. There is no doubt about the animosity of these three men against the head of the Government, as it is plain right along, every day, to-day as in other days, that that element is present in the consideration of public questions. I regret that it is, but it is, and I think nobody can question it.

Take, for example, the attitude of the men I have named in reference to the slavery question, how bitter they were against the Supreme Court as then presided over by Taney; and yet Clay saw Taney for the last time, shook hands with him, and said, "No man attempted to defeat you in the Senate more than I did," and yet he wanted to confess, after having watched Taney's performance, that no man better fitted than he for the position could have been secured. He shook hands with him, and those two old men—one nearing his grave and the other soon to go into the grave—like children, wept because of an honest confession; but think how bitter it had been before!

Mr. BORAH. Yes, I know; and the incident which the Senator has just related is one of the very beautiful incidents in history which I have never been able to verify. I hope it is true and I presume it is. I have searched industriously for the actual facts with reference to that; I have accepted it as true, because I should hate to see so touching a scene eliminated from history; but I have searched in vain for the actual record of that transaction. It is supposed to have taken place in the chambers of Chief Justice Taney when no one was present except Clay and Taney, and I can find nowhere where either Clay or Taney reported what took place. Can the Senator?

Mr. FESS. I take it from history as a common statement of history.

Mr. BORAH. I take it from history, too, and I am willing to accept it; but, really, if the Senator were called upon for absolute authenticity, I doubt if he would get it. But let me say this, and then I will not interrupt the Senator again:

There is no doubt but that Webster and Clay and Calhoun felt intensely upon the subject which they were discussing. There is no doubt but that Jackson and Taney felt intensely upon that subject. There is no doubt from my reading that both sides felt that they were in the right upon the question; and they felt that a different course from that which they were

pursuing, each side to itself, would be injurious to the Government of the United States and perhaps destructive of it. I take the position that they were not animated by hatred, by personal animosity, but in the sincere and devout belief that they were advocating that which was in the interest of their country. I prefer to take that view of it.

Mr. FESS. The Senator is very charitable to the great leaders whom we have been discussing. I want to be charitable, but I can not get away from the fact that the bitterness between the trio and the man against whom they fought for so many years had something to do with their conduct.

Why, Mr. President, that issue that was then growing, that came to its climax in the Supreme Court decision, offers the most dramatic performances that ever were witnessed in the Senate Chamber. The difficulty between the two sections of the country had come to a breaking point. The slavery issue had come up, and great men were doing the best they could to keep it down. I think the most dramatic incident took place just before the compromise of 1850. As I recall, it was the 15th day of February, 1850, when Henry Clay came into the Senate Chamber to present the compromise that afterwards bore his name. He was so weak that he had to be assisted up the steps of the Capitol; and a minister from his section took him by the arm and suggested that he ought not to attempt to speak. Mr. Clay said:

> If I can read the current of the times correctly, we are facing a crisis; and, if I can prevent it, my life is not to be in question.

He went on the floor of the Senate, and spoke the entire day of the 15th, and finished a very remarkable argument on the 16th of February in presenting the famous compromise between the North and South on this very sensitive question.

On the 4th of March there followed another scene that is difficult to describe. That was when John C. Calhoun came into the Senate Chamber to deliver his last utterance in the body—a body in which he had served with very remarkable distinction for years and years.

I have regarded Calhoun as one of the keenest minds America has ever produced, and, while he went to extremes in the argument on State sovereignty, no one ever presented that case in the light in which he presented it. As he came into the Senate Chamber on the 4th of March, 1850, to speak on the compromise of Clay, he was wrapped in flannels. The marks of death were upon him. He was dying with an incurable disease. He held his written speech in his hand. He rose in a hushed Senate to speak, and his voice was gone. He turned to a Virginia Senator and asked him if he would not read the speech. That wonderful contribution to our political history, in a crisis, of John C. Calhoun, was read by a colleague of his on the 4th of March, and, on the 31st day of the same month, Calhoun was a corpse. That was the last utterance in the Senate Chamber of that great leader.

I recall that he said, in substance, "Senators, if we do not discontinue this agitation, it means the disruption of the Government"; and then went on and argued. Only three days after that, on the 7th of March, Daniel Webster, announced to make his famous 7th of March speech, rose to speak. That was an effort on the part of a colleague of Clay, keenly recognizing the danger, sympathizing with an effort to avoid difficulty, and he made what was called a compromise speech, which was one of his last.

Those three speeches, of Clay in February, Calhoun on the 4th of March, and Webster on the 7th of March—the only speech in history known by the day on which it was delivered—were followed by the famous speech of William H. Seward, on the 11th of March, only four days after Webster's. Seward spoke to an empty Senate, but it was that speech where the expression "An irrepressible conflict is on" was first used.

Senators, that was a situation in which the whole Nation was involved. It was reaching the stage of danger, and three of those four men were trying to affect a compromise, but the fourth one was announcing a new principle of the irrepressible conflict and a higher law.

It was the announcement that there was a higher law than the Constitution that gave concern to everybody, for if the course is followed to use one's own judgment, inflamed by passion, with the Nation facing conflict, and ignore the Constitution for a higher law, what will be the limit? It is with that in view that I contend that when you say that you are against a man because he gives more attention to property than to human rights, the expression "human rights" is such an indefinable term that there is no limit to where you can go. I am just as much concerned about human rights as are those who are prating about human rights, but I want the Supreme Court to have some guide when they are dealing with human rights.

Mr. BORAH. Mr. President, is there any more difficulty in defining human rights than there is in defining the rights of property?

Mr. FESS. Then let the law define the phrase.

Mr. BORAH. Exactly, and that is all I am asking for; that is all anybody wants.

Mr. FESS. The Senator is asking for the court to define it. I want the law to define it.

Mr. BORAH. We have undertaken to define it by the law, but the court held the law unconstitutional. What will you do about that?

Mr. FESS. To what does the Senator refer?

Mr. BORAH. I refer to the case of Adair against the United States. We passed a law making it an offense to dismiss a man because he was a member of a union, or making it an offense for an organization or a corporation to demand that an employee should sign this kind of a contract. We passed the law. That was the law. We declared the public policy.

Mr. FESS. If we can not enact a law that will pass the Supreme Court because it is unconstitutional, then our remedy is to amend the Constitution, and not demand that the court should do what we can not do.

Mr. BORAH. Exactly, but I do not know that we can not do it. Some of the judges held that we could.

Mr. FESS. Of course, there is something in that. My contention here is that we are not safe in using our emotions in deciding what is humanitarian and what guide we should follow.

The only safe course to follow to maintain our system is to hold the Supreme Court within the law, and not to demand that it go beyond the law and decide anything that might be popular before the country because somebody is demanding it.

Senators, because of the terrific situation in the country, in 1850 when the fugitive slave law became a part of that compromise and when the fugitive slave law went on the statute books, personal liberty laws were passed everywhere in the North. They were passed in my State, saying that "We will not respect the law, no matter what be the sanction back of it."

Not only that, but such a man as Henry Ward Beecher, in the pulpit in Brooklyn, announced that he would not obey the law; that he would ignore if not violate the law, and that he would go to jail if necessary. That is revolution.

The sentiment ran so high that effort was made to repudiate the law. Then, in the face of that sort of thing, came the Kansas-Nebraska bill of 1854, involving the slavery situation in Kansas and Nebraska. Then came the organization of a new party, in 1856. Then came the Dred Scott decision on the sensitive question of the fugitive slave law. Can it be imagined how a court made up of such men as Taney and Curtis and McLean and Catron and Grier, and characters of high repute like that, could withstand the terrific demand that they repudiate the law of 1850?

They tried to avoid the issue, but they could not very well avoid it, and the Dred Scott decision was rendered. Never in the history of our country up to that time was there such a crisis. Taney was condemned, brutally assailed upon every hand, because unfortunately he used an expression in reciting the history of slavery prior to 1800. He said that up to that time a slave was not a citizen who could be heard or have his rights considered. Everywhere it was published that Taney expressed that as his opinion. That never was true. He only recited what had been the usual opinion prior to 1800, and, on account of his recital of the fact, he was charged as having handed down that opinion, that the colored man had no rights which the white man was bound to respect.

That statement is even read to-day as coming from Taney. It is not true, and never was true, but was only a matter of recital of what had been the fact prior to the year 1800. But because of that, this country flamed, and in 1858 came the great debate between Lincoln and Douglas, and now people are stating—I have heard it stated on the floor of the Senate—that Lincoln, the great nationalist, the devotee to the Constitution, had repudiated the Dred Scott decision and had faulted it on the ground of an unwarranted decision which he would not respect. That is not true. Lincoln never made any such statement as that. The statement of Mr. Lincoln was to the effect that so far as the case and the parties to the contract are concerned, that was the law, and must be observed, but he added:

> I do not propose to permit it to be the rule of my conduct, and I will try to induce the people to take a different view.

Jackson has been quoted all along as having said that he would interpret the law in accordance with his own views of the law and not as somebody else would interpret it. That is not true of Jackson, either. He never made any such statement, that he would interpret the law as he saw fit, and not as

the Supreme Court would see fit. But he did state that when it came to the making of the law and his signing it, he would be the judge as to whether it was a constitutional law or not before he would sign it. That was as far as Jackson ever went in his statement in regard to the constitutionality of a law. But people jump at these loose statements and quote them as authority for saying that they will not abide by the Constitution except as they understand it.

It is these things, Mr. President, which I think are dangerous, these positions where you are not confined either by the law or by the Constitution except as you understand it, whether it is the decision of the court or not.

When Judge Taney died, in 1864, the question as to the appointment of his successor arose. Some time before Taney died the famous Booth case came up in Wisconsin. That was a case where a State refused to respect the decision of the court in the Dred Scott case involving the fugitive slave law.

The two powers, the Federal Government and the State government, came in conflict. It was serious. Ultimately the matter reached the Supreme Court. Mark you, there was a court the majority of which were appointed by Democrats, whom some people had said were rather inclined not to stand for the national viewpoint; and yet that court by a great majority supported the Federal Government in the decision in the Dred Scott case as against Booth in the State court, showing the independence of the court over and above the pressure of passion organized by limited noise and protests from every State in the North, and yet the court stood adamant for the Constitution and the law.

Then when Taney died and Lincoln was called upon to appoint a Supreme Court justice, quite naturally among the great number of distinguished men available Salmon P. Chase would stand high in favor. Senators will recall that Salmon P. Chase had been a candidate against Lincoln in the convention at Chicago in 1860. The Ohio delegation was standing for Chase, and when it came to the third ballot four Ohio delegates left Chase for Lincoln and that nominated Lincoln. Chase was not happy. There always had been a difference between Lincoln and Chase. Yet the great soul of Lincoln, with a magnanimity difficult for anybody to understand, took into his Cabinet whom? Chase, who had been a candidate against him; Stanton, a Democrat, who had been in Buchanan's Cabinet. He had taken Simon Cameron first, but got rid of him and put Edwin M. Stanton in the place. He took Bates; to took Seward, the leading candidate against him in the convention of 1860. He had some difficulty with Chase as Secretary of the Treasury. He was not altogether loyal to Lincoln in his campaign for a second term.

Then came this vacancy. Lincoln called Chase and had a conference with him. The point was to make Chase understand that in Lincoln's judgment he would be the fit man to succeed Taney. I wonder whether Senators recall that only two Chief Justices occupied that position on the court from 1801 to 1864, 63 years—Marshall for 34 years and Taney for 28 or 29 years.

Chase was appointed. At once the South was fearful, because Chase was a famous abolitionist, as everyone knows. Chase was strong in support of the agitation against the fugitive slave law. Chase was supported by the New York Tribune, the most bitter sheet against slavery, and by the New York Independent, published by Bowen, another equally bitter opponent of slavery. Chase seemed to be the representative of men like Charles Sumner, John P. Hale, Wendell Phillips, William Lloyd Garrison, who were looked upon by the southern statesmen as a man who would be biased against the South. What happened? Many cases came on in time of war. The prize cases came on, 30 in number. While we were in war, it was not a war in the sense of being a war between nations. It was a new field to be worked out. Chase proved himself capable.

Then came the famous Milligan case. That case arose in Indiana where a citizen had been committed by a military commission and he sued under habeas corpus for his freedom. The case reached the Supreme Court. Here was a case directly arising out of reconstruction. What was the outcome? The court, largely abolitionist, supposed to be biased on the question of slavery, rendered a decision against the right of any commission to commit a citizen where the courts were open to that citizen and held that he would have to be committed under the direction of a court and that the commission would not be recognized. There was a military commission growing out of what would be called the enforcement of law by war. I mention that to show that the Supreme Court under the most terrific pressure on a sensitive question like this did not yield, but stood upright and delivered its decision in accordance with its judgment of what the Constitution is. The same thing occurred in the Slaughterhouse case.

It is my concern, Senators, that we shall regard this institution in its independence, in its right to be fearless, without regard to pressure, so that this one coordinate branch of the Government which thus far has not yielded to this or that prejudice will still be permitted to exercise that function. That is why I look with much concern upon attacks on men like Hughes, upon any man whose opinion might not coincide with some preconceived opinion of someone who may not like our particular system of judiciary. That is the issue before us now.

There has been a great deal of criticism because the Supreme Court is not responsive. We go into a great campaign, and the issue is before the country. A decision is reached by the people. Then a case goes to the Supreme Court involving that issue, and an effort would be made to have the Supreme Court yield to what the last election indicated was the decision reached by the people. I think that is the most dangerous tendency that anybody could urge or recognize. It is a fact known to all people that a decision this year will be reversed next by the same people. On the other hand, we have found time and time again that courts appointed by Presidents like Jackson have rendered decisions diametrically opposed to the policies of the appointing power. Time and again courts are called upon to render decisions arising out of war conditions, and yet the decision comes without any regard for politics, as in the case when Lincoln was elected.

Mr. ASHURST. Mr. President——

The VICE PRESIDENT. Does the Senator from Ohio yield to the Senator from Arizona?

Mr. FESS. I yield.

Mr. ASHURST. I have continued to listen to the able Senator, and my admiration for his opulent storehouse of history has increased; but it seems to me the able Senator is in some way proceeding upon a false hypothesis. With historical accuracy the Senator points out how, from the beginning of the Government, that great tribunal, the United States Supreme Court, which we all revere, has resisted pressure and has possessed the courage and the manhood frequently to render decisions in direct opposition to the notions or the views of the President who sent their names to the Senate.

Mr. FESS. That is often the case.

Mr. ASHURST. One of the reasons why the United States Supreme Court has exhibited the courage, ability, and the manliness of which the Senator speaks is because the various executives in making nominations for that great tribunal used extraordinary care, disregarded preconceived notions, and allowed no political preferment or thought of political advantage to creep into the executive mind in making the nominations. It is very doubtful in the present instance if such is true.

Mr. FESS. May I say to the Senator that my information is that the Department of Justice, before this appointment was made, was asked to read and did read many, many decisions of Judge Parker before a recommendation was made.

Mr. ASHURST. Of course, that may be.

Mr. FESS. That is my information.

Mr. ASHURST. I assert that it is and will remain a matter of doubt whether that prudence and circumspection which have been heretofore exercised in previous nominations, were employed in this particular case. But waiving that, the reason why the Supreme Court to-day is the palladium of American liberty, and one of the reasons why we feel content with its decisions, is that it never allows even a feather's weight to fall in the scales where the rights of men are being weighed, and the law is being applied. Surely, the Senator ought not to find it amiss in his colleagues when they carefully consider the merits or demerits of men who are nominated for that place.

The very point the able Senator has been discussing—that is, the desirability, the necessity of keeping that court independent—is what some of us are trying to do. We are trying to see to it that no man shall go upon that bench unless he is superbly equipped in every way, and no Senator who regards the common opinion of the Senate, no Senator who wishes to hold the esteem of the Senate, would say that even in a small and modest way this nominee compares with the list of men whose names have been presented to us in the past 25 or 30 years.

While I must admire the thesaurus of historical references which the Senator possesses on this subject, all of his ability and learning seem to be directed to the wrong point. Those of us who are opposed to this nominee are trying to keep the Supreme Court on the high plane it holds, so that not only the rights of property, but the rights of men will be secured.

Mr. FESS. Mr. President, the Senator from Arizona has made the statement that the appointee whose nomination is now pending is not the type of man who would adorn the Supreme Court Bench. The Senator must be permitted to have his

opinion, but I likewise must be permitted to say that I can not agree with him.

If I wish to know as to the character or qualifications of an appointee, I must make some investigation. The Department of Justice, under the present Attorney General, made an investigation of the character and qualifications of Judge Parker. That was done before there was any commitment. By reason of that investigation and through personal conversations with Senators who know Judge Parker, the President was convinced of the nominee's qualifications.

In addition to that, judges who have been associated with Judge Parker and who have observed his work on the bench, and lawyers who have appeared before his court are, so far as I know, unanimous in the statement that he will make an excellent judge.

I have heard only one fugitive rumor from a great lawyer—and it was mere rumor—that Judge Parker is not a man of great legal ability. I have tried to run down that rumor, and I find that there is a basis for that rumor.

Mr. ASHURST. Mr. President, will the Senator yield to me?

The VICE PRESIDENT. Does the Senator from Ohio yield to the Senator from Arizona?

Mr. FESS. Yes.

Mr. ASHURST. I assure the able Senator that I have not listened to any rumors regarding Judge Parker. I have read his opinions.

Mr. FESS. I assume that the Senator has not listened to rumors, but I have found a basis for the statement that Judge Parker is not a great lawyer. If I should give the information to my friend from Arizona, which I will in private, he would agree with me that that rumor should have no influence at all; but, on the other hand, from all sources I have the statement, from men who know, that Judge Parker will make a great judge; and I have a statement from a man in whom the Senator from Arizona has unlimited confidence—and I should like to tell him who he is, but the statement was given personally to me—that Judge Parker will make a great judge of the Supreme Court, and that we will make no mistake if we shall confirm him.

I am convinced that Judge Parker is not the type of man that my good friend from Arizona has intimated. If I thought he were not fit for the position, I would not vote for his confirmation; but my friend knows that the same character of statements have been made as to men who had not at the time of appointment made their reputations but who did attain enviable reputations when the opportunity came to them to do so. I think the same thing will happen in this case.

The Senator from Arizona will recall that in the case of Mr. Justice Stone his nomination was held up for quite a while because of a feeling that there might be some question as to his attitude on certain questions, but the subsequent career of Mr. Justice Stone on the Supreme Bench has conclusively answered his critics and has demonstrated that any suspicion as to his qualifications was not well founded.

The Senator from Arizona knows that there is a very distinguished member of the Supreme Court whose nomination was held up for six months because of a certain group here who thought he would be too liberal; and yet, so far as I know, in not a single case has the suspicion which was then entertained been justified. In other words, I am of the opinion that anyone who is big enough to reach the plane of the Supreme Court Bench is too big ever to belittle himself by yielding to any influence which would cause him to render a decision that is unfair, unjust, or beneath the dignity of that bench.

I differ from my good friend from Arizona in that I think Judge Parker measures up to the qualifications which I have outlined. Evidently my friend has doubts about his qualifications. If he has, I, of course, shall not find any fault with his course; I do not intend to do so. I am simply trying to put before the Senate to-day, in my weak way, from the background of our history, the danger of going beyond the record, taking as a disqualification a judicial opinion with which we might not agree, and listening to prejudicial statements, from whatever socialistic organizations they may emanate, when it comes to the question of denying a nominee a place on the Supreme Court Bench. I will not do any such thing, and I know that my friend from Arizona will not.

I am much concerned about the maintenance of the standard of the Supreme Court. It has always been the target of a certain group, but, as I stated a while ago when I read from this paper [indicating], the statement of those who are opposed to Judge Parker is but an incident; the Supreme Court is the issue. I accept that issue; I believe it to be the issue, and so believing I shall do what I can to present the case in the light that I think it ought to be presented, and I shall vote for the confirmation of Judge Parker.

Mr. President, at this stage this is all I have to say, but I shall have something more to say later.

ALLOCATION OF POWER AT BOULDER DAM

As in legislative session,

Mr. ODDIE. Mr. President, on November 19, 1929, I made a statement in the CONGRESSIONAL RECORD, as follows:

> Mr. President, the Colorado River Basin States should be fully informed regarding the position of Nevada on the question of power allocation under the Boulder Canyon act. To this end I submit for publication in the RECORD the official announcements of the Secretary of the Interior relating to power allocations under said act, the official offer of the State of Nevada for the power, and correspondence with the Secretary of the Interior in connection therewith.

Since then various highly important matters in connection with the Boulder Canyon Dam contracts have developed, and it is necessary that these be made public as quickly as possible in order to expedite consideration.

I herewith submit for the RECORD my principal correspondence with the Secretary of the Interior since November 19, 1929; the second memorandum submitted to me by the Secretary under date of March 22, 1930, making allocations of power; a letter from the Nevada Colorado River Development Commission dated April 7, 1930, setting forth the views and reaffirming the bid of the State of Nevada, and copies of the contracts, which have already been signed by the California interests but not yet signed by the Secretary of the Interior, which arrived by airplane this morning and have just been transmitted by the Secretary to me. In transmitting the photostat copies of these contracts the Secretary has written to me under date of April 29, 1930, as follows:

> I am inclosing copies of the contracts for sale of power on the Boulder Canyon project, which have just been received. I have discussed with you heretofore the various provisions which affect Nevada which have been incorporated in the contract, and am transmitting an estimate to-day to the Director of the Budget for commencement of construction.

In the above letter the Secretary states that he has heretofore discussed with me the various provisions which affect Nevada which have been incorporated in the contract. The Secretary has discussed the matter with me in a general way several times but stated that he could not give me any information as to what the contracts would contain because they were being drawn in California and that there were no copies here. The Secretary's letter conveys the impression that I am in accord with the contracts which have been signed, but I want it distinctly understood that I have never given him such an impression, and that I do not concur in a number of the provisions contained in his allocation of March 22, 1930, upon which these contracts were drawn. Up until this morning no intimation has been given to me as to what these contracts contain, and I, therefore, desire full opportunity to analyze the contracts before they are finally signed by the Secretary of the Interior. In order to conserve Nevada's interests, I have requested the Secretary to withhold signing these contracts until a full opportunity has been given to Nevada's congressional delegation and the Nevada Colorado River Development Commission to analyze the same.

Mr. President, I ask permission to place certain letters and documents in the RECORD at this point.

The VICE PRESIDENT. Without objection, it is so ordered.

The matter referred to is as follows:

THE SECRETARY OF THE INTERIOR,
Washington, December 13, 1929.

Hon. TASKER L. ODDIE,
United States Senate.

MY DEAR SENATOR ODDIE: I am in receipt of your letter of December 12, in which you quote a telegram sent by Mr. George W. Malone on December 7. When a decision shall have been reached in this matter, I shall be glad to advise you thereof.

Very truly yours,

RAY LYMAN WILBUR.

DECEMBER 12, 1929.

Hon. RAY LYMAN WILBUR,
Secretary of the Interior, Washington, D. C.

MY DEAR MR. SECRETARY: The announcement that a Nevada organization, to be known as the Boulder Canyon Power Co., had been formed, and a recapitulation of the offers of the State of Nevada submitted to you in my letter of November 16, 1929, were contained in a wire to you from Mr. George W. Malone, secretary of the Nevada Colorado River Development Commission dated December 7, 1929, as follows:

"The Nevada organization is now formed and known as the Boulder Canyon Power Co. Any one of the three methods suggested to you in

my brief November 12 will be satisfactory to our State, as follows: A withdrawal clause as set down in the brief, without restriction as to place or manner of use or allocation to the State without restriction, the same as any other bidder, and we will immediately proceed to do all that is necessary to make proper contracts with your department through our State government, which will occasion some delay; or allocate the power to the private organization known as the Boulder Canyon Power Co., which will forthwith make proper contracts with your department, conditions set down for other bidders. As set out in my brief, we believe we are entitled to only one-third of the power as a matter of equity, but we will, however, make proper contracts with you for any amount of such power from one-third to all of the firm power generated at the bid price of 1.75 mills per kilowatt-hour for the falling water as described in your memorandum. Immediately you have definitely allocated a definite amount of this power to the private organization and set down the requirements that must be met by all bidders for such power you will be furnished letters of credit from responsible banking institutions that will satisfy your department beyond any doubt of the ability of this organization to forthwith undertake this or any other contract of a like size, including installing and operating the power plant. We believe the price should be uniform to all bidders and should be 1.75 mills per kilowatt-hour, and we are prepared, as already explained, to forthwith make proper contracts with your department for all of the firm power developed by the Boulder Dam construction as intended by the Boulder Dam project act."

I wish to call your particular attention to the following statement quoted from the foregoing wire:

"As set out in my brief, we believe we are entitled to only one-third of the power as a matter of equity, but we will, however, make proper contracts with you for any amount of such power from one-third to all of the firm power generated at the bid price of 1.75 mills per kilowatt-hour for the falling water as described in your memorandum."

This statement seems to confuse the preferential right of the State of Nevada to an allocation of one-third of the power with her inherent right to be considered as a primary bidder for 100 per cent of the power; also the statement may be construed to limit the legal right of the State of Nevada and the Nevada company which has been formed to tender bids and to limit the authority of the Secretary of the Interior to award contracts for 100 per cent of the power to be developed at the dam. The Boulder Canyon Dam act imposes no such limitation.

I wired Mr. Malone concerning the ambiguity in the above statement and have received a copy of his telegram of December 11, 1929, to you, which reads as follows:

"Understand from Senator ODDIE that my wire of December 7 to you may not be clearly understood. We are ready to proceed forthwith under the bid as presented to you in my brief on November 12. Please disregard any wording that may inadvertently not strictly conform to the bid as set forth in said brief."

As I interpret the Boulder Canyon Dam act, there is no question but that the State of Nevada has a preferential right to an allocation of one-third of the total power to be developed at the dam. It is also my understanding that the firm bid of the State of Nevada or of a Nevada organization for 100 per cent of the power and your authority to contract with either of them for 100 per cent of the power to be developed at the dam is in conformance with the provisions of the act.

When a decision has been reached in the matter, I shall appreciate your early advice.

Very sincerely yours,

TASKER L. ODDIE.

WASHINGTON, D. C., *January 17, 1930.*

Hon. RAY LYMAN WILBUR,
Secretary of the Interior, Washington, D. C.

MY DEAR MR. SECRETARY: Please accept my thanks for the copy of the opinion submitted by the Solicitor of the Interior on the Boulder Dam situation which you sent to me with your letter of the 11th instant.

Very sincerely yours,

TASKER L. ODDIE.

THE SECRETARY OF THE INTERIOR,
Washington, January 11, 1930.

Hon. TASKER L. ODDIE,
United States Senate.

MY DEAR SENATOR ODDIE: For your information, I am inclosing a copy of an opinion submitted to me by the solicitor of this department, on January 6, 1930, consolidating in one opinion the memoranda which have been submitted to me on various Boulder Dam questions during the past several months.

Very truly yours,

RAY LYMAN WILBUR, *Secretary.*

DEPARTMENT OF THE INTERIOR.

Memorandum for the press—Release for January 17, 1930.

Secretary of the Interior Wilbur to-day made public a memorandum from Edward C. Finney, solicitor of the department, consolidating in one paper the legal opinions of the latter previously given on various phases of the problems that surround the execution of the Boulder Dam project.

The Secretary had asked the meaning of the term "public interest" as used in sections of the Boulder Canyon project act and the Federal water power act controlling preferences given to municipalities. He wanted to know whether that "interest" is the Government's responsibility to the whole people of the United States or the interest of some particular part of the area to be served by Boulder Dam power. The solicitor answered that the primary meaning of this term is the "Government's responsibility, financial and otherwise, to all the people of the United States for the greatest good to be derived from this project." "The term excludes," he states "confinement of the benefits of Boulder Dam power to one locality out of the many which comprise 'the region' capable of service. The term 'public interest' is the dominant consideration, a check upon the preferences mentioned in the two acts. It is necessarily a source of broad discretionary power in the Secretary."

The Secretary asked whether this "public interest" includes the necessity for making a good business contract which will guarantee the return of the investment within 50 years, and whether if the "preference right" of States and municipalities would require the making of contracts less sound as a matter of business than a contract offered by a privately owned utility, which consideration should dominate: The "public interest" or the "preference right"? The solicitor answered that "the primary public interest is in the soundness of the contracts and the solvency of the contractor, not in the corporate or municipal character of that contractor," and that "it is only when two bidders can both offer a satisfactory contract from a business viewpoint that the Secretary must or should base his choice between them on claimed preference."

In his third question, the Secretary asked whether he is required to accept the highest bid for power or whether he must take into consideration what constitutes a reasonable return under all attendant circumstances, including "competitive conditions at distributing points or competitive centers," the language used in section 5 of the act. The solicitor answered that "the selling standard is to be 'reasonable returns,' not 'all the traffic will bear.' The phrase 'shall be made with a view to obtaining reasonable returns' was in fact a specific amendment to this section and clearly indicates the selling basis deemed to be feasible and most in line with public interest and the equitable distribution of benefits of Boulder Dam power." He went on to say that "if the bidder can not sell his power in competition with other sources he is not a desirable source for reimbursement of the Federal expenditure. A 'reasonable return' must be justified by 'competitive conditions' or it is not reasonable. An unreasonably high return at the risk of bankruptcy of the bidder is not a sound basis for a contract required to be made in the 'public interest.'"

The Secretary asked whether a municipality or State has a preference for power which it proposes to sell outside its boundaries as against a bid for power by a privately owned public utility proposing to sell in the same area outside the boundaries. The solicitor answered that "the 'preference' of the municipality is a preference in consumptive right, not in merchandising advantage. Outside its own borders, a State or municipal corporation reselling power is on a parity with any other public utility selling in that territory. It is not entitled to elect, on behalf of consumers who are not its citizens, whether those consumers shall buy from it or from another company. If it does seek to make that election for them, its decision has not the dignity of a 'preference' within the 'policy of the Federal water power act,' but has the status of a competitive offer."

The Secretary asked whether the States of Nevada, Arizona, and California can claim two separate, independent preference rights, one under the Federal water power act and another under the Boulder Canyon project act. The solicitor referred to the contention of the State of Nevada that, although the preference mentioned in the Boulder Canyon project act is specifically limited to power "for use within the State," that State nevertheless has a preference under the power act for power which it resells elsewhere. He denied that contention and said that, "if so, the preference specifically created by the project act, restricted as to use, is less valuable than that previously available. Analysis thus indicates that the importance of the new preference language lies in its distinction between States and municipalities, not in any distinction as to place of use." He added that the special reference to the preference of Arizona, Nevada, and California in the project act "preserved the rights of Arizona and Nevada as superior to those of Los Angeles, provided both should meet the conditions of the Federal water power act. But to indicate that no greater concession from the policy of the Federal water power act was intended, the restriction 'for use within the State' was added."

The Secretary asked whether Nevada, Arizona, and California may claim any preference rights not possessed by other States. The solicitor answered that the preference of a State over a municipality given by the project act is intended to apply to the three States in the lower basin only.

The Secretary asked whether a State must execute a power contract claimed under a preference right within six months after notice by the Secretary. The solicitor answered that "the quoted time limitation against the State must therefore be construed to apply against the special exception made in favor of the State. This exception, as stated above, refers to a case of conflict between a State and a municipality outside the State. In other words, within six months, a State presenting plans equally well adapted as those of the competing municipality and equally consistent with the public interest might claim power in preference to the municipality. After six months the State reverts to the parity with outside municipalities established by the Federal water power act."

The Secretary asked what discretion is permitted him by the preference clauses of the act. The solicitor answered that "the public interest requires, first, financial security of the United States, and secondly, equality of access to Boulder Dam power by areas composing the region in proportion to the needs of the applicants, provided their plans for its utilization and conservation are equally well adapted. Once these conditions are met, and the question is one of apportionment between the applicants whose demands for power are equally consistent with the public interest, and only then, does the allocation of power pass from the realm of the Secretary's discretion into the area of rigid legal rights." The solicitor went on, with reference to the demand of Nevada for one-third of the power, to quote an amendment offered in the House and rejected which, if granted, would have given Nevada 15 per cent of the power. He said, "Rejection by Congress of an amendment which would have substituted a specific allocation in lieu of the Secretary's discretion is some indication of the extent of the discretionary power to make allocations which the act intended to vest in him. If Congress declined to allocate 15 per cent of the total to Nevada, and the Secretary in his discretion has tentatively allocated 18 per cent, no good reason appears for reading into the act a mandate that Nevada shall be entitled to 33⅓ per cent."

The Secretary asked whether a municipality is entitled to a preference if the plan it presents is not as well adapted to conserve and utilize the power capable of development as a private competitor's plan; and what factors of the "plans" should be considered; i. e. production, transmission, distribution, financing, etc., or only some of these elements. The solicitor replied: "If the plan of one applicant in these respects is superior to the other, the question of preference does not arise, because conditions precedent to its exercise have not been discharged. As to the second part of the question, the Secretary has the broadest possible discretion in deciding which of two conflicting plans is better adapted for such utilization and conservation."

The Secretary asked whether there is any difference between the preference to which Los Angeles and the other municipalities are entitled. The solicitor answered that they all stand on a parity.

The Secretary asked whether he is authorized to fix reasonable requirements as to financing which must be made by the applicants. The solicitor answered "Yes," and stated that rigid examination of the applicant's financial status is not only within the Secretary's power but is his duty.

The Secretary asked whether a corporation whose stock is held by a State is entitled to whatever preference the State would have if applying directly. The solicitor answered that it is not. He said, "The Secretary, in receiving the bid of a corporation, would not be required to go back of the corporate entity to discover who its stockholders might be, nor to grant the corporation a preferred status if such examination should disclose that a State is one stockholder or the only stockholder. Without specific recognition in either act of such an unusual creature we may assume that a State, wishing to claim the benefits granted by the act to 'States' should claim them in its own right and not in the right of its creature."

The Secretary asked whether the preference rights of States and municipalities are assignable. The solicitor answered that "the preference right itself is not assignable either before or after the execution of a contract by the State. A contract obtained in exercise of this preference right is assignable, subject to all restrictions and conditions contained in the original contract, and without diminution of the State's liability to the United States and without waiver of the requirement of financial and legal capacity of the assignee."

The Secretary asked whether, in case of a conflict between a State and a municipality, there is any difference in status between the two applicants. The solicitor answered, "A State, and a municipality of another State, both presenting applications under section 7 of the Federal water power act, stand on a basis of equality. If the conflict is between applications of a State and a municipality of that same State the right of the State is superior, inasmuch as the municipality is its creature and possesses the capacity to make application only by sufferance of the State. If the conflict is between a State and a municipality foreign to it the Secretary may make an equitable allocation between them in accordance with the public interest and in accordance with what, in his discretion, appears the best method of conserving and utilizing the water resources of the region."

The Secretary asked whether, if Los Angeles and the Metropolitan Water District can not now execute enforceable contracts, he would be authorized to make contracts with other bidders, preserving to the preference claimants the right to contract for part of the power if they tender enforceable contracts within a designated time. The solicitor answered that "the necessity for flood control makes it to the interest of all parties that the project be initiated and completed at the earliest possible date. To the furtherance of this end the Secretary is plainly empowered to make the necessary contracts at the earliest possible date. Contracts to that end which specifically reserve to the Secretary the power to make further contracts with the preference claimants for the power which he has allocated to them, since they are not 'in conflict therewith,' are within his authority."

The Secretary asked the proper construction of section 16 of the project act, which refers to the commissioners of the Colorado River Basin States and their right to act in an advisory capacity to the Secretary of the Interior. The solicitor answered that this section was to be construed with section 15, which provides for formulation of comprehensive plans for development of the Colorado River and its tributaries, and that "the purpose of the two sections is to provide liaison between the present undertaking, administered by the Secretary of the Interior, and future development of the river during formulation of plans for such developments. It was not the intention of section 16 to superimpose upon the authority and discretion of the Secretary of the Interior, everywhere else made the basis of administration, the control, and supervision of a group of commissioners whose number, place, and time of meeting, responsibility, and authority are unprovided for. The right of the commissioners is to advise and cooperate in the correlation of the present undertaking with future undertakings; it is not a right to direct the Secretary in the administration of the present work." He adds, "They may tender him advice, but he is in nowise obliged to act thereon contrary to his own judgment."

FEBRUARY 17, 1930.

Hon. RAY LYMAN WILBUR,
Secretary of the Interior, Washington, D. C.

MY DEAR MR. SECRETARY: That the State of Nevada might be able to amend her constitution so that proper contracts could be made for Boulder Dam power almost as soon as a municipality could take the required action on a bond issue is indicated by an opinion of Hon. M. A. Diskin, attorney general of the State of Nevada, rendered on February 14, 1930, and contained in a telegram of the same date which I have received from Hon. George W. Malone, secretary of the Nevada Colorado River Development Commission, from which I quote the following:

"The constitution of Nevada can be amended by initiative petition. The legislature must meet, however, and provide a method for carrying into effect such amendment. If by special session of legislature a method is provided, then this method carried out as they may provide, the constitution may be amended at the regular election in November. Or if the regular session in January, 1931, provided the method, then it may be placed before the people by special election immediately following such action by the legislature."

In connection with the bid of the State of Nevada for power to be developed at Boulder Dam and the allocation of said power to the State, submitted by the Nevada Colorado River Development Commission on November 12, 1929, and referred to in my letter to you of November 16, 1929, I shall appreciate your taking into consideration the opinion of the attorney general of Nevada, as above stated.

Very sincerely yours,

TASKER L. ODDIE.

THE SECRETARY OF THE INTERIOR,
Washington, February 18, 1930.

Hon. TASKER L. ODDIE,
United States Senate.

MY DEAR SENATOR ODDIE: Thank you for sending me the statement in regard to the constitution of Nevada, which I am very glad to have. I will see that it is put with our Boulder Canyon record.

Sincerely yours,

RAY LYMAN WILBUR.

MARCH 11, 1930.

Hon. RAY LYMAN WILBUR,
Secretary of the Interior, Washington, D. C.

MY DEAR MR. SECRETARY: In connection with my study of the Boulder Dam situation it would be very helpful if you could supply me with a synopsis of each of the bids which has been made for the power to be developed at the dam.

Very sincerely yours,

TASKER L. ODDIE.

THE SECRETARY OF THE INTERIOR,
Washington, March 15, 1930.

Hon. TASKER L. ODDIE,
United States Senate.

MY DEAR SENATOR ODDIE: In reply to your request of March 11, I take pleasure in sending you a summary of the applications received for Boulder Dam power.

Very truly yours, RAY LYMAN WILBUR.

Applications for power, Boulder Canyon project

Applicant	Date of application	Horsepower	Load factor	Millions of kilowatt-hours	Remarks
			Per cent		
State of Nevada	Sept. 8, 1929			1,200	One-third of total power generated.
State of Utah	Oct. 1, 1929	50,000			To be taken as needed.
Metropolitan water district	July 5, 1929	280,000	98	1,789	
Mohave County, Ariz	Sept. 28, 1929	100,000			
City of Los Angeles, Calif	July 5, 1929	[1] 1,000,000	[1] 55	3,600	
City of Burbank, Calif	Sept. 24, 1929	[1] 6,800	[1] 45	20	
City of San Bernardino, Calif	Oct. 21, 1929	10,000	[1] 45	[1] 29	
City of Pasadena, Calif	Sept. 24, 1929	24,500	45	72	
City of Glendale, Calif	Sept. 21, 1929	[1] 17,000	[1] 45	50	
City of Riverside, Calif	Oct. 24, 1929				Amounts not stated.
City of Santa Ana, Calif	Sept. 30, 1929	10,000	[1] 45	[1] 29	
City of Newport Beach, Calif	do	10,000	[1] 45	[1] 29	
City of Beverly Hills, Calif	Oct. 30, 1929				Do.
Southern California Edison Co	July 5, 1929	[1] 850,000	[1] 65	3,600	
Central Arizona Light & Power Co	Oct. 5, 1929				Do.
Los Angeles Gas & Electric Corporation	Sept. 24, 1929	73,000	[1] 37	[1] 177	Or 7.3 per cent California allocation.
The Arizona Power Co	Sept. 30, 1929	30,000	[1] 50	[1] 98	
Yuma Utilities Co	Sept. 27, 1929	26,800	[1] 45	[1] 79	
Southern Sierras Power Co	do	[1] 72,600	[1] 60	286	7.94 per cent of all generated.
Public Utilities Consolidated Corporation	Sept. 28, 1929	134,000	[1] 50	[1] 394	
San Diego Consolidated Gas & Electric Corporation	Sept. 27, 1929				3.9 per cent of California allocation.
Katherine Midway Mining Co	Sept. 12, 1929	5,000	[1] 50	[1] 16	
Consolidated Feldspar Corporation	Sept. 25, 1929	325	[1] 50	[1] 1	
J. T. Dobbins, Fredonia, Ariz	Sept. 10, 1929				Amounts not stated.
United Verde Copper Co	Sept. 23, 1929				Do.
Palo Verde Mesa & Chucawalla Valley Development Association	July 3, 1929	30,000	[1] 50	[1] 98	
City of Colton	Oct. 21, 1929	3,000	45	9	

[1] Quantities assumed from best data available.

THE SECRETARY OF THE INTERIOR,
Washington, March 22, 1930.

Hon. TASKER L. ODDIE,
United States Senate.

MY DEAR SENATOR ODDIE: In order that you may continue to be advised of the status of the proposed development of the Colorado River by the construction of Boulder Dam I am inclosing copy of a press release which I have issued to-day announcing the consummation of agreements for the allocation and sale of power.

Very truly yours,

RAY LYMAN WILBUR.

[Memorandum for the press—Release for March 23, 1930]

DEPARTMENT OF THE INTERIOR.

The Secretary of the Interior announced to-day that an agreement had been reached upon the allocation of the power to be developed by the Boulder Canyon Dam project.

This agreement, the Secretary's statement says, has followed months of negotiation. The dam, it is explained, will cost in the neighborhood of $165,000,000. The sum must be repaid with 4 per cent interest within 50 years by the sale of power. It has been necessary, in the first place, to work out a plan which gives every assurance of the return of this money to the Government. The plan must be sound financially and socially and must give the widest possible benefits of a regional character. Since many interests were involved and there was a wide difference of opinion as to the meaning of portions of the Boulder Dam act, agreements with the interested parties were sought and have been consummated.

Contracts are now being drawn for allocation of the primary power generated at Boulder Dam on the following basis:

"To Nevada, for use in Nevada, 18 per cent with the privilege of contracting for any part or all thereof at any time on two years' notice, and to relinquish the power contracted for on the same notice with the privilege of repeating withdrawals and relinquishments as its needs may require throughout the 50-year period of amortization.

"To Arizona, for use in Arizona, 18 per cent on the same terms as the allocation to Nevada, provided that if either State does not absorb its entire allocation the other may utilize it up to 4 per cent.

"To the metropolitan water district of southern California, 36 per cent plus so much of the secondary power and of the power allocated to, but not taken by, the States as may be needed and used for pumping of Colorado River water into and in the aqueduct and from the aqueduct into reservoirs.

"To the city of Los Angeles and the municipalities of Anaheim, Burbank, Beverly Hills, Colton, Glendale, Fullerton, Newport Beach, Pasadena, Riverside, San Bernardino, and Santa Ana, 19 per cent in all, of which 13 per cent is allocated to the city of Los Angeles and 6 per cent to the other municipalities to be allocated between them as they may agree; or, if they fail to agree, then by the Secretary, with the provision that so much of the allocation to the municipalities as is not contracted for by them shall be used and paid for by the city. Those municipalities to contract with the United States within one year of execution of contract by the city of Los Angeles.

"To the Southern California Edison Co., the Southern Sierras Power Co., the Los Angeles Gas & Electric Corporation, and the San Diego Consolidated Gas & Electric Co., 9 per cent in all, to be allocated between them as they may agree; or, if they can not agree, allocation to be made by the Secretary.

"Power allocated to the States and not used by them or by the district shall be taken and paid for equally by the city and the companies. Any part of the 36 per cent allocated to the district but not used by it shall be available, one-half to the city and one-half to the companies. Any firm power allocated to the States but not required by them or by the district shall meanwhile be taken and paid for, one-half by the city and one-half by the companies.

"All contracts for purchase of power, including the States, district, city, municipalities, and Edison Co. are to be made directly with the Secretary of the Interior.

"Contracts with the city and the Southern California Edison Co. will provide that they, as lessees, shall operate the plant under the general supervision of a director appointed by the Secretary of the Interior.

"The city shall have the right at cost to generate power for the other municipalities and the metropolitan water district. The States shall designate their generating agency when contracting.

"The lessees shall be subject to the orders of the director with respect to enforcement on behalf of the Secretary, of the contract rights of the States, the district, and the municipalities.

"The Federal Government will install the dam, tunnels, power house, penstocks, and generating and transforming and switching equipment, the costs of installation and operation to be borne by those contracting for the power in proportion to the amounts received.

"Title shall be held by the United States, but nevertheless all contracting parties other than States will be required to pay pro rata to the Secretary in trust for Arizona and Nevada adequate compensation in lieu of taxes on machinery and equipment.

"A clause will be inserted in all contracts insuring distribution of power developed at Boulder Dam at such a price as in the opinion of the Federal Power Commission is fair to all consumers.

"The price to be charged for falling water for generation of primary power is 1.63 mills, the price for secondary power to be determined later. Power supplied to other allottees by the lessees shall be paid for to the United States at cost at the switchboard, such cost to be determined by the Secretary."

Having reached the above agreement the following resolution was approved on March 20 by representatives of the Metropolitan Water District of Southern California, the Board of Water and Power Commissioners of the City of Los Angeles, and the Southern California Edison Co.:

"*Resolved*, That we recommend to the Secretary of the Interior that the 64 per cent of total firm power from the Boulder Canyon project available to California interests under his allocation be divided upon terms hereinafter set forth, as follows:

"To the Metropolitan Water District, 36 per cent of the total firm power.

"To the city of Los Angeles and other municipalities which have filed application, 19 per cent of the total firm power.

"To the Southern California Edison Co., 9 per cent of the total firm power total (exclusive of unused firm power) 64 per cent of the total firm power; and further

"*Resolved*, That we recommend to the Secretary that the Metropolitan Water District be given the first call upon all unused firm power and all unused secondary power up to their total requirements for pumping into and in the aqueduct and that any unused power of the municipalities be allocated to the city of Los Angeles, and that any remaining unused firm power or unused secondary power be divided one-half to the city of Los Angeles and one-half to the Southern California Edison Co.; and further

"*Resolved*, That all parties hereto agree to cooperate to the fullest extent to make the Boulder Canyon project a success in all its phases; and further

"*Resolved*, That this agreement is based upon the resolution already passed by the Metropolitan Water District of Southern California and accepted by the Board of Water and Power Commissioners of the City of Los Angeles whereby that district requests the city of Los Angeles at cost to generate its power requirements and to operate its transmission lines, which lines are to be paid for and owned by the Metropolitan Water District."

This allocation was also approved by the city council of Los Angeles on March 21.

The Secretary of the Interior sent Northcutt Ely, executive assistant, who has been for three weeks in Los Angeles discussing the details of the projected contract, the following telegram:

"Delighted with message. Will make announcement to-day in accordance with your suggestion. I take great pleasure in extending, through you to the Officials of the Metropolitan Water District, the city of Los Angeles, and the Southern California Edison and associated companies, my deep gratitude for the cooperative spirit which they have shown in developing a fair, representative, reasonable, and workable agreement. This agreement will permit the Boulder Dam to be of wide regional benefit. I am particularly grateful for the decision that all parties agree to cooperate to the fullest extent to make the Boulder Canyon project a success in all of its phases. I think but few of us can visualize the stupendous advantages that will come to the whole Southwest region and to the Nation from the control and wise use of the Colorado River. Kindly extend my greetings and gratitude to Mayor Porter in acknowledging to him the action of the city council."

In making these allocations public the Secretary stated:

"It has been my endeavor in this confused field, where there was much difference of opinion, to devise a plan which would be fair, reasonable, and just, which would take care of all interests in the region involved, and which would give Nevada and Arizona the opportunity of obtaining cheap power without preliminary expense for the development of industries.

"It was most difficult to work out a general plan which would be sure of returning to the Government within 50 years all sums advanced. I think that this can be done without difficulty under the projected contracts and that considerable sums will be available in addition for Nevada and Arizona.

"I am gratified to have all of the interests come together in an agreement to back the allocation, and everything connected with the Boulder Canyon project act, since until such an agreement could be reached I would not feel justified in presenting the contracts to Congress for an appropriation.

"I have every hope that with the power allocation settled and the way open to begin active construction the few remaining points in regard to water allocation can readily be settled by Arizona and California. I can see no fundamental reason for failure on the part of these States to come together in an agreement. Regional problems where several States are involved require infinite patience and careful consideration, but with good spirit they can be worked out. If we can make a success of this regional plan, the many others that must follow inevitably in other parts of the United States with the advance of our national development can be worked out more readily.

"In the long negotiations leading up to the present agreement we have had the active cooperation of many men throughout southern California. Chief Engineer Scattergood, of the Los Angeles City Power Co., has given many months of his great engineering skill to this project. I particularly wish to express my appreciation of the careful studies made by Commissioners Haynes and Scofield. Their active cooperation will be of great assistance in completing the project. The members of the metropolitan water board have consistently stood for the best interests of the southwest region. I do not see how we could have gotten forward as far as we are now without the vision and persistence of Mr. William P. Whitsett, Mr. John G. Bullock, and Mr. W. B. Matthews."

WASHINGTON, D. C., *March 24, 1930.*

Hon. RAY LYMAN WILBUR,
Secretary of the Interior, Washington, D. C.

MY DEAR MR. SECRETARY: This will acknowledge the receipt of your letter of March 22 inclosing press release announcing the confirmation of agreements for the allocation and sale of power to be developed at Boulder Dam.

I note from this that you are now drawing contracts for the allocation of the primary power generated at Boulder Dam and, in behalf of the State of Nevada, I hereby enter formal protest to the signing of such contracts either by the primary contractors or by the Secretary of the Interior.

This protest is made in order to give the Nevada Colorado River Commission and the members of the Nevada delegation in Congress an opportunity fully to analyze the allocations and terms set forth in your announcement which seriously limit and deprive the State of Nevada of its rights under the Boulder Dam act.

Sincerely yours,

TASKER L. ODDIE.

THE SECRETARY OF THE INTERIOR,
Washington, March 24, 1930.

Hon. TASKER L. ODDIE,
United States Senate.

MY DEAR SENATOR ODDIE: I have your communication of March 24.

There will be a clause in the contracts in connection with the Boulder Dam power permitting Nevada to take one-third of the power for use in the State by firm contract made within six months. At the same time we are protecting Nevada's interest with the drawback, which will permit 18 to 22 per cent of the power to become available for Nevada's uses without preliminary expense or obligation.

I think that after you and your associates have reviewed the matter you will find that there has been full protection of the interests of your State.

If Nevada wants to contract and pay for one-third of the power for use within the State, you will note that full opportunity will be given her.

Sincerely yours,

RAY LYMAN WILBUR.

MARCH 28, 1930.

Hon. RAY LYMAN WILBUR,
Secretary of the Interior, Washington, D. C.

MY DEAR MR. SECRETARY: With further reference to your communications of March 22 and 24, 1930, concerning the allocation and sale of power to be developed at Boulder Dam, there are certain questions I desire to ask, the answers to which will be of great assistance in appraising your recent proposals.

The information contained in your letter of March 24, 1930, in answer to my letter of protest, that "there will be a clause in the contracts in connection with the Boulder Dam power permitting Nevada to take one-third of the power for use in the State by firm contract, made within six months," indicates that there may be other matters of great importance to Nevada in said contracts. Therefore I shall greatly appreciate receiving, when available, several copies of these contract forms.

Your memorandum of October 14, 1929, setting forth tentative proposals for the development, allocation, and sale of Boulder Dam power stipulates that the Federal Government will install the dam, tunnels, and power house. Items 1 and 2 are quoted as follows:

"1. The United States will construct the dam, including outlet works, power tunnels, and the power-plant building.

"2. The lessees of power shall purchase and install the penstocks, machinery, and equipment in the power plant and shall provide the necessary switching, transforming, and transmission facilities."

This memorandum also sets forth the manner of measuring the energy and the rate for sale of 1.63 mills per kilowatt-hour, respectively, in items 6 and 7, quoted as follows:

"6. Energy will be measured at generator voltage.

"7. The rate for sale of energy will be 1.63 mills per kilowatt-hour, with provision for readjustment of the rate at the end of 15 years from the date of execution of contract and every 10 years thereafter, as provided in section 5 (a) of the Boulder Canyon project act."

Your memorandum of March 22, 1930, states that—

"The Federal Government will install the dam, tunnels, power house, penstocks, and generating and transforming and switching equipment, the costs of installation and operation to be borne by those contracting for the power in proportion to the amounts received.

"The price to be charged for falling water for generation of primary power is 1.63 mills, the price for secondary power to be determined later. Power supplied to other allottees by the lessees shall be paid for to the United States at cost at the switchboard, such cost to be determined by the Secretary."

It would seem apparent that under the first tentative proposal set forth in your memorandum of October 14, 1929, the lessee was to purchase and install the penstocks, machinery, and equipment in the power plant and the necessary switching and transforming facilities, whereas your proposal of March 22, 1930, stipulates that the Government shall purchase and install the same.

It has been roughly estimated that it will require an investment of $21,000,000 to provide the generating, transforming, and switching

equipment, which, under your first proposal, represented a financial burden on the lessees and under your recent proposal a financial burden upon the Government. On the former basis the sale price for energy was determined at 1.63 mills per kilowatt-hour, and, if I construe correctly your recent proposal, this price to the primary contractee remains the same, notwithstanding the increased burden of $21,000,000 for the installation of equipment which the Government must assume. Certainly, if the previous rate were correctly determined at 1.63 mills per kilowatt-hour, to return the Government's investment amortized over a period of 50 years in compliance with the provisions of the Boulder Canyon Dam act, the rate to the primary contractees of 1.63 mills per kilowatt-hour which you now specify in your proposal of March 22, 1930, is incorrect.

The question of price of power to the primary contractee is a matter of vital importance not only in conforming to the provisions of the Boulder Canyon Dam act in becoming the basis for the return of the Government's entire investment but also because of its relation to the resale price to other consumers. In view of the fact that your proposal of March 22, 1930, includes the Government's additional investment in generating, transforming, and switching equipment, will it not be necessary to determine a rate for the sale of power to the primary contractees not upon the basis of falling water but upon the cost of the generated power at the switchboard, so that the $21,000,000 additional money to be invested by the Government may be included in the total and its return provided for under the terms of the Boulder Canyon Dam act?

Because of my comments concerning the rates to be established for the sale of power, I would not have you think that I in any way oppose the procedure of having the Government provide for the generating, transforming, and switching equipment. This was one of the principal objections that I had to the original proposal, in that it created an extremely heavy financial burden on the consumers of power and imposed upon the sale of power for all time interest charges increased above those prevailing for Government credit. It is important, however, that this lessened cost of power, because of the use of Government credit for the installation of generating, transforming, and switching equipment, be reflected in the price which it will be necessary for the State of Nevada to pay.

Under your proposal of March 22, 1930, what will be the price of power to Nevada under the allocation quoted below?

"To Nevada, for use in Nevada, 18 per cent with the privilege of contracting for any part or all thereof at any time on two years' notice, and to relinquish the power contracted for on the same notice with the privilege of repeating withdrawals and relinquishments as its needs may require throughout the 50-year period of amortization."

In the event that Nevada should desire to exercise her right under the clause in the contract to which you make reference in your letter of March 24, 1930, to take one-third of the power for use in the State by firm contract within six months, what would be the price for power and what financial obligations would the State be compelled to assume?

Very sincerely yours,

TASKER L. ODDIE.

THE SECRETARY OF THE INTERIOR,
Washington, March 29, 1930.

Hon. TASKER L. ODDIE,
United States Senate.

MY DEAR SENATOR ODDIE: Just at present, there is no Boulder Dam contract here in Washington. This is being negotiated in Los Angeles with those who are to sign for the power. As soon as the contracts are available here, I will see that you get copies. The plan being worked out is to build the dam and power house as one operation, install the machinery, and have the machinery paid for by the lessees within a short period. This will not affect the price of 1.63, which will be a separate financial operation. Of course, any expense in connection with the installation of the machinery will, of necessity, be a part of the cost of power. If Nevada should exercise her right for 33⅓ per cent of the power, the price would be at cost. This cost would, of course, have to include the 1.63 plus a proportion of the cost of installation of machinery, etc. It would be necessary for a contract acceptable to the Secretary to be signed which would return to the Government one-third of the expenditure with interest.

Very sincerely yours,

RAY LYMAN WILBUR.

[Memorandum delivered personally by Mr. Burlew at 11 a. m., April 7, 1930]

APRIL 7, 1930.

ARIZONA-NEVADA ALLOCATIONS

Proposal with primary contractors that alternatives be included in the contract requiring one year's notice during first 10 years of contract for power withdrawals; or

Requiring only six months' notice for blocks of power up to 1,000 horsepower each, and not exceeding 5,000 horsepower in any one year.

All withdrawals over 1,000 horsepower each or totaling above 5,000 horsepower in any one year to be on two years' notice.

THE SECRETARY OF THE INTERIOR,
Washington, April 10, 1930.

Hon. TASKER L. ODDIE,
United States Senate.

MY DEAR SENATOR ODDIE: In response to your request, I wish to confirm the fact that the proposal covering the amount of notice required for withdrawals of blocks of power by Nevada and Arizona, which will be included in the Boulder Dam power contract now being negotiated, applies equally to relinquishments of power.

Very truly yours,

RAY LYMAN WILBUR.

APRIL 9, 1930.

Hon. RAY LYMAN WILBUR,
Secretary of the Interior, Washington, D. C.

MY DEAR MR. SECRETARY: Reference is made to your second tentative proposal dated March 22, 1930, for the allocation and use of power under the Boulder Canyon Dam act; to my letter of protest of March 24, 1930; to your reply of the same date; to my letter of inquiry of March 28, 1930; and to your reply of March 29, 1930.

1. In your memorandum of March 22, 1930, primary power to be developed at Boulder Dam was allocated to the State of Nevada, as follows:

"To Nevada, for use in Nevada, 18 per cent, with the privilege of contracting for any part or all thereof at any time on two years' notice, and to relinquish the power contracted for on the same notice with the privilege of repeating withdrawals and relinquishments as its needs may require throughout the 50-year period of amortization."

I can see no valid reason why this should not be 33⅓ per cent instead of 18 per cent, as indicated. The difference in the amount of power between 18 per cent and 33⅓ per cent would impose no greater burdens upon the primary contractees in the early years of development and would relieve them of the burden of consuming the 15⅓ per cent in excess of the 18 per cent allocation in the later years of the amortization period, when power in California developed by natural gas and oil might be considerably lower in cost than Boulder Dam power.

2. The 2-year notice for the withdrawal and relinquishments of power under the proposed allotment to the State of Nevada dated March 22, 1930, is not in the interest of the power consumers of the State and would seriously limit the amount of power which could be consumed therein. I greatly appreciate your recognition of this fact in having submitted two alternative proposals, whereby the time of notice may be shortened on smaller units of power. These I have submitted to the Nevada Colorado River Development Commission for consideration, but I have not yet been apprised as to whether either of the proposals meets with approval. As soon as I receive such advice I will transmit the same to you.

3. (a) Under your tentative plan of allocation of March 22, 1930, no provision is made for the participation of Nevada in the secondary power. Reference in the Boulder Canyon Dam act concerning the interests of Nevada in the power to be developed at Boulder Dam relate to all of the power—primary and secondary—and, therefore, Nevada is entitled to receive a one-third interest in all of the secondary power to be developed. It is not improbable that the secondary power to be developed at Boulder Dam will be 50 per cent or more of the amount of primary power and, consequently, it is very important that the interests of Nevada be fully protected by a specific allocation in the contracts which are now being formulated of one-third of the secondary power.

(b) Under the allocation of one-third of the secondary power to the State of Nevada, it would also seem necessary to include an optional provision, whereby the State of Nevada, in the event that it was not desirable at any time to use the power, would receive the proceeds from the sale of the same.

(c) In your tentative plan for allocation of March 22, 1930, you state that the price for secondary power will be determined later. It is very important that the price of secondary power should be determined and specified in the contracts with the primary contractees or that the conditions governing the determination of its price be fully set forth. In view of the fact that the Government's investment is to be completely returned on the basis of sale of primary power, it is obvious that there is no burden of Government investment resting on the sale of secondary power, and, consequently, all of the revenue derived therefrom should be available for distribution to the allottees, the State of Nevada to receive one-third of the proceeds of sale.

4. (a) With regard to the cost of power allocated to the State of Nevada, you state in your letter of March 29, 1930, as follows:

"The plan being worked out is to build the dam and power house as one operation, install the machinery, and have the machinery paid for by the lessees within a short period. This will not affect the price of 1.63, which will be a separate financial operation."

To return the cost of the power equipment, estimated at $21,000,000, in a "short period," as you state, would materially increase the cost of power to the consumers, which would be particularly burdensome in the earlier years of the contracts, when the greatest stimulus should be given to the sale of power by the lowest possible rates. There is no question of your authority under the Boulder Canyon Dam act to amortize this

investment in power equipment over a 50-year period, the same as is provided for the amortization of the Government's investment in the dam and power house. Therefore, it would seem neither necessary nor desirable from an economic standpoint to lessen the period of amortization of the Government's investment in power equipment below 50 years, and I hope you will so provide.

(b) Your letters do not disclose clearly what the cost of power to Nevada is to be. My understanding of your statement in your letter of March 29, 1930, is that this cost should be no more than 1.63 mills per kilowatt-hour for failing water plus a switchboard rate to represent the additional cost of power equipment, its installation, and a reasonable cost of operation on the basis of amortizing the Government's estimated investment of $21,000,000 at 4 per cent interest. Any basis for computing the switchboard rate for power to Nevada to include profits, however small, to the primary contractees would be unjust to Nevada and contrary to the spirit of the law.

5. (a) In view of the fact that you state in your letter of March 24, 1930, that there will be a clause in the contracts for the sale of Boulder Dam power permitting Nevada to take one-third of the power for use in the State by firm contract made within six months, thereby establishing the status of Nevada as a primary contractee, I can not understand the reason for excluding the legally designated agent of Nevada—the Nevada Colorado River Development Commission—from participation in the formulation of the contracts which are ultimately to be negotiated by the primary contractees and the Secretary of the Interior. Furthermore, in denying the State of Nevada the opportunity to participate in the formulation of these contracts is a distinct violation of the rights guaranteed to the State by the Boulder Canyon Dam act. The Nevada Colorado River Development Commission as well as the congressional representatives of the State of Nevada have been at a considerable disadvantage in not knowing the details concerning the formulation of these important contracts upon which so greatly depends the future economic prosperity of Nevada.

(b) Had the State of Nevada been permitted to participate in the formulation of the contracts, it would probably have been unnecessary for me to have written my letter of protest of March 24, 1930, in order to protect the interests of the State in knowing in detail the nature of the contracts prior to their final negotiation by the primary contractees and the Secretary of the Interior. As the contracts are still in the process of formulation and as I am left in the dark with reference to their many and intricate provisions, and in the absence of participation by the official representatives of the State of Nevada in the formulation thereof, it becomes necessary for me to reiterate my protest against the signing of these contracts by any of the parties thereto until ample opportunity has been afforded to the Nevada congressional representatives and the Nevada Colorado River Development Commission to analyze and consider the same.

It would be very helpful in obtaining Nevada's final approval if the objections as outlined above be met in the contracts which are now being formulated. I shall appreciate receiving copies of the contracts as soon as they are formulated. I desire to reserve the right further to protest the provisions of your tentative proposals of March 22, 1930, and the contracts which are being formulated.

Very sincerely yours,

TASKER L. ODDIE.

THE SECRETARY OF THE INTERIOR,
Washington, April 10, 1930.

Hon. TASKER L. ODDIE,
United States Senate.

MY DEAR SENATOR ODDIE: In response to your letter of April 9, I will say that I am doing the best I can to protect Nevada's interests and still secure a workable and acceptable contract. Through the generous action of those most likely to sign the contracts we have been able to secure drawback provisions which can be of the greatest value to Nevada. There is no possibility of these drawback provisions reaching up to 33⅓ per cent of the power.

We are making a careful study of the possibilities in regard to secondary power. I have wired your suggestions to our representatives.

I note the other points brought out in your letter. Just as soon as we have copies of the complete contracts we will be glad to place them in your hands. As you probably realize, this is a most complicated negotiation, and we are having much difficulty in bringing the situation to a point where it will be practical and financially sound.

I have received communications from Mr. Malone, and have written him along somewhat similar lines to those in this communication.

Sincerely yours,

RAY LYMAN WILBUR

[Release date: Monday afternoon, April 14, 1930]

MEMORANDUM INCLUDING RESOLUTIONS BY THE NEVADA COLORADO RIVER DEVELOPMENT COMMISSION AND LETTERS TO SECRETARY WILBUR IN CONNECTION WITH HIS RECENT ANNOUNCEMENT ON THE DIVISION OF BOULDER DAM POWER

CARSON CITY, NEV., *April 7, 1930.*

Hon. RAY LYMAN WILBUR,
Secretary of the Interior, Washington, D. C.

DEAR MR. SECRETARY: Press reports indicate that contracts are being drawn on agreements already entered into between your department and the city of Los Angeles and the Southern California Edison Co. and allied companies for the disposal of the power to be developed by the construction of Boulder Dam.

In view of the very great interests of Nevada in the development of the Boulder Dam project, which is her greatest natural resource, our Colorado River Commission, after due consideration, has passed the following resolutions, viz:

1. That full copies of any proposed contracts relating to the disposal of Boulder Dam power should be furnished the Nevada Colorado River Commission and our congressional representatives for study and consideration and discussion with your department before being signed by the Government.

2. That the two years' notice required for the "withdrawal and relinquishment" of certain amounts of power is unreasonable and not practicable, and can not be accepted by our State. We submit herewith suggestion for "graduated time" for withdrawal and relinquishment.

3. That Nevada should participate in the secondary or "dump" power produced in the same proportion as in the primary power.

4. That the matter of "cost at the switchboard" should be clarified over recent "press releases" to definitely mean the cost at the switchboard the same as the so-called "primary contractors," the city of Los Angeles and Southern California Edison Co.

5. That there is apparently no valid reason under the set-up of your department that either Nevada or Arizona may not withdraw up to 33⅓ per cent of the total amount of power, instead of 22 per cent in the event one State does not take advantage of its full allocation; however, this point may be reconsidered by the commission in the event all other matters are satisfactorily adjusted.

6. That copies of these resolutions be furnished the President of the United States, the Secretary of the Interior, and our congressional representatives.

In the event your department is unable to make proper arrangements for the protection of Arizona and Nevada, we are still ready and willing to proceed along the lines laid down in our brief presented to you on November 12, 1929, wherein our State is fully protected, viz:

CONTRACT PROPOSED BY NEVADA

If, in the judgment of your department, it is not practicable to meet the suggestions (suggestions relate to a proper practicable "withdrawal and relinquishment" clause on one-third of the power to be developed), we are prepared and do offer at this time to make contracts satisfactory to your department for all of the "firm" power to be generated at Boulder Dam.

We are prepared to install and operate the power plants, furnishing your department satisfactory guarantees for proper financing. This offer can be applied in either of two ways:

1. The allocation can be made to our State and we will immediately call a special session of our legislature, then follow whatever procedure may be necessary to make the proper changes in our constitution, if required, and in this event must necessarily take advantage of the six months' provision and the reasonable time allowed in paragraph (c), section 5, of the act for a State or political subdivision thereof to authorize and market the necessary bonds.

This may occasion delay comparable to the time required for such changes, in the natural course of procedure. In this connection it may be pointed out that any State bid would be subject to a State election, and that any municipal bid is subject to a municipal election in any State, whether in Nevada or California.

2. The allocation can be made to a Nevada organization as proposed in a previous memorandum to your department. This would have the same standing as any private organization and in addition the further preference that the State's application would be withdrawn in its favor.

This organization will forthwith enter into a contract satisfactory to your department, as provided in the act, for "failing water" as proposed in your recent memorandum, so that no delay may be occasioned, and that Congress in its coming regular session may make the necessary appropriation and construction of the project may proceed without delay. The organization is ready to put up a bid bond or certified check mentioned in your memorandum to secure execution of the required contract if required by your department.

Upon your telegraphic request any further information that you may desire relative to methods of procedure or financial stability will be furnished.

Sincerely yours,

THE NEVADA COLORADO RIVER DEVELOPMENT COMMISSION,
By GEO. W. MALONE, *Secretary.*

CARSON CITY, NEV., *April 7, 1930.*

Hon. RAY LYMAN WILBUR,
Secretary of the Interior, Washington, D. C.

DEAR MR. SECRETARY: I am to-day transmitting to you the result of our Colorado River Development Commission meeting of yesterday in which certain exceptions are taken to your recent announcement of the division of Boulder Dam power.

As set forth in our brief of November 12, 1929, to you, we have always been and are now ready to accept a proper practicable "with-

drawal and relinquishment" arrangement, and have repeatedly offered to take care of our allotment, fully safeguarding the Government in its investment, if it were not possible to secure full protection to our State in the manner you have outlined.

Press reports have indicated that you were not satisfied that financial security could be had by dealing with Nevada in the manner suggested by us. We presume, in the absence of specific information, that you must have meant the "Nevada organization" since, of course, no doubt could be logically entertained as to the financial stability of the State; and in that connection, the Attorney General's ruling that the constitution of the State could be changed without undue delay precludes denying the State's application by reason of the delay that it might occasion.

As you have previously been informed, a telegraphic request from your department will immediately bring all of the financial assurance you could possibly require with reference to the "private organization's ability to safeguard the Government in this or any other enterprise of a like size."

We recognize the controversy now pending between advocates of private and Government ownership, but since you have said that the assistance of the private organization is necessary and have allocated some of the power to California private organizations, we see no valid reason for distinction between a California "private organization" and a Nevada "private organization" in the matter of policy in the allocation of power if financial security is available; and, as has been said, such information will be furnished upon your telegraphic request. Our only interest is to fully protect our State.

We will await your decision in this matter with much interest.

Sincerely yours,

THE NEVADA COLORADO RIVER DEVELOPMENT COMMISSION,
By GEO. W. MALONE, *Secretary*.

SUGGESTION FOR "GRADUATED TIME" FOR WITHDRAWAL AND RELINQUISHMENT OF POWER UNDER RECENT ANNOUNCEMENT BY YOUR DEPARTMENT

APRIL 7, 1930.

Any conditions of "withdrawal and relinquishment" arrangement must be predicated on the actual condition and extent of the power market and the effect such "withdrawals and relinquishments" will have on such market.

At the time Boulder Canyon power will be ready for delivery, it has been estimated that 1,500,000 horsepower of electrical energy will be in use in the Southern California power market, with an annual increase of 100,000 installed horsepower necessary to supply such market. There would be no valid reason for allowing more time for the relinquishment of a certain stipulated amount of power than the time required for the natural growth of the available market to require the use of such power to be relinquished.

In the matter of original withdrawals of certain amounts of power, there is no reason why notice of such withdrawals should require a longer period than the time required to construct steam-electric units to replace the power to be withdrawn. These plants can be constructed within a 6-months' period, and certainly the largest plant can be designed, constructed, and put in operation within a period of one year.

1. That amounts of power up to and including 1,500 horsepower be withdrawn and returned to the system with a very nominal notice, 48 hours is suggested, since the most that could possibly be required would be the adjustment of a steam unit already in use, to the required amount.

2. That amounts of power from 1,500 horsepower up to and including 5,000 horsepower, 60 days' notice be given.

3. That amounts of power from 5,000 horsepower up to and including 25,000 horsepower, 160 days' notice be given.

4. That on all amounts over 25,000 horsepower, one year's notice be given.

5. That upon withdrawals a certain adjustment be allowed at the time of placing in actual use, since it is impossible to compute with mathematical exactness the actual amount required under certain circumstances, until the power is actually in use—5 per cent is suggested as a reasonable adjustment in this connection.

For illustration, if a request were made for 2,000 horsepower, and it were found upon turning on the power that 2,100 horsepower were needed, or that only 1,900 horsepower were required, no further notice would be required to start the plant on the required energy. This is necessary, since there would be no agency to take up the slack.

We believe the above outline is reasonable and practicable and can be handled without inconvenience to any primary contractors.

At a regular meeting of the Nevada Colorado River Development Commission held on April 6, 1930, at which time certain representative citizens of Las Vegas were present at the specific invitation of the commission, the resolutions included in the letter to Secretary Wilbur were formulated and approved, including alternative proposal made to purchase the power in lieu of a satisfactory "withdrawal and relinquishment" arrangement made by the commission on November 12, 1929.

Those present from Las Vegas included Bert Henderson, State Senator from Clark County; Al Cahlan, editor of the Las Vegas Review; Dr. Roy Martin, business man and former member of the commission, and E. W. Clark, banker and member of the commission from Las Vegas.

The meeting unanimously agreed upon the letter to Secretary Wilbur, including the resolutions appearing in full text herein.

THE NEVADA COLORADO RIVER DEVELOPMENT COMMISSION.
By GEO. W. MALONE, *Secretary*.

BOULDER DAM POWER CONTRACTS SIGNED—LOS ANGELES, 11 SMALL CITIES, AND CALIFORNIA EDISON AGREE TO TAKE 64 PER CENT

LOS ANGELES, April 26.—Fifty-year contracts with the Government for the purchase of Boulder Dam electric power were signed to-day by the city of Los Angeles, the directors of the Metropolitan Water District, and directors of the Southern California Edison Co.

Signing of the contracts, which call for delivery to the three California groups of 64 per cent of the dam's total estimated power capacity of 650,000 horsepower, paved the way for immediate action by the Government for construction of the mammoth project.

Northcutt Ely, assistant to the Secretary of the Interior, will leave to-morrow by airplane for Washington with the signed contracts. The Secretary is expected to take them before Congress immediately and request an appropriation for construction of the dam.

Under the terms of the contract the Government agrees to pay all costs of installing the $21,000,000 power-generating machinery. The two lessees agree to pay a rental in 10 annual installments that in 50 years will amortize the cost of equipment with 4 per cent interest. Title to the dam and power plants will remain with the Government.

The city of Los Angeles is allocated 13 per cent of the 650,000 horsepower total to be generated. It will operate power units, however, generating up to 91 per cent of the power. The Metropolitan Water District, which is allocated 36 per cent of the power, the 11 small southern California cities that are members with Los Angeles in the Metropolitan Water District are allocated 6 per cent, and Arizona and Nevada, with allocations of 18 per cent apiece, will get their power through the city of Los Angeles. The Edison Co. contracts for 9 per cent of the power from the dam.

WASHINGTON, D. C., *April 28, 1930*.

Hon. RAY LYMAN WILBUR,
Secretary of the Interior, Washington, D. C.

MY DEAR MR. SECRETARY: From a Los Angeles press dispatch I noted that the contracts for Boulder Dam power had been signed by the Metropolitan Water District of Los Angeles, the city of Los Angeles, and the Southern California Edison Co., and in a telephone conversation with Mr. Burlew I find that this report is correct.

In my letter to you of March 24, 1930, I protested the tentative allocations made in a press announcement transmitted in your letter to me of March 22, 1930, as follows:

"This will acknowledge the receipt of your letter of March 22 inclosing press release announcing the confirmation of agreements for the allocation and sale of power to be developed at Boulder Dam.

"I note from this that you are now drawing contracts for the allocation of the primary power generated at Boulder Dam, and in behalf of the State of Nevada I hereby enter formal protest to the signing of such contracts either by the primary contractors or by the Secretary of the Interior.

"This protest is made in order to give the Nevada Colorado River Commission and the members of the Nevada delegation in Congress an opportunity fully to analyze the allocations and terms set forth in your announcement which seriously limit and deprive the State of Nevada of its rights under the Boulder Dam act."

In my letter to you of March 28, 1930, I reiterated my request for copies of the contract forms, as follows:

"The information contained in your letter of March 24, 1930, in answer to my letter of protest, that 'there will be a clause in the contracts in connection with the Boulder Dam power permitting Nevada to take one-third of the power for use in the State by firm contract, made within six months,' indicates that there may be other matters of great importance to Nevada in said contracts. Therefore, I shall greatly appreciate receiving when available several copies of these contract forms."

In your response of March 29, 1930, you stated: "As soon as the contracts are available here I will see that you get copies." You also stated in this same letter "Just at present there is no Boulder Dam contract here in Washington. This is being negotiated in Los Angeles with those who are to sign for the power."

In view of the fact that there were no copies of the contract available here in Washington and for the reason that the same were being negotiated in Los Angeles, in my letter to you of April 9, 1930, I objected to the fact that the Nevada Colorado River Development Commission had been denied an opportunity to participate in the formulation of the contracts and protested against the signing of these contracts by any of the parties thereto until ample opportunity had been afforded to consider the same as follows:

"5. (a) In view of the fact that you state in your letter of March 24, 1930, that there will be a clause in the contracts for the sale of

Boulder Dam power permitting Nevada to take one-third of the power for use in the State by firm contract made within six months, thereby establishing the status of Nevada as a primary contractee, I can not understand the reason for excluding the legally designated agent of Nevada—the Nevada Colorado River Development Commission—from participation in the formulation of these contracts which are ultimately to be negotiated by the primary contractees and the Secretary of the Interior. Furthermore, in denying the State of Nevada the opportunity to participate in the formulation of these contracts is a distinct violation of the rights guaranteed to the State by the Boulder Canyon Dam act. The Nevada Colorado River Development Commission as well as the congressional representatives of the State of Nevada have been at a considerable disadvantage in not knowing the details concerning the formulation of these important contracts upon which so greatly depends the future economic prosperity of Nevada.

"(b) Had the State of Nevada been permitted to participate in the formulation of the contracts it would probably have been unnecessary for me to have written my letter of protest on March 24, 1930, in order to protect the interests of the State in knowing in detail the nature of the contracts prior to their final negotiation by the primary contractees and the Secretary of the Interior. As the contracts are still in the process of formulation and as I am left in the dark with reference to their many and intricate provisions, and in the absence of participation by the official representatives of the State of Nevada in the formulation thereof, it becomes necessary for me to reiterate my protest against the signing of these contracts by any of the parties thereto until ample opportunity has been afforded to the Nevada congressional representatives and the Nevada Colorado River Development Commission to analyze and consider the same."

In view of the fact that you have ignored my request to supply copies of the contracts before being signed by the parties thereto, I now declare that a state of conflict exists between the applicants who have filed with you bids for primary power under the provisions of the Boulder Canyon project act, Public Law 642, Seventieth Congress, and request a public hearing before you as provided under section 5, paragraph c, of said act.

In making this protest and in calling for a hearing on the conflicting applications between the States of Nevada and Arizona and the Metropolitan Water District of Los Angeles, the city of Los Angeles, and the Southern California Edison Co. of California, it is not my desire to delay the progress of the project but to afford a reasonable opportunity for all parties in interest to consider the contracts which are being formulated for the disposition of the power to be developed under the Boulder Canyon project act before you sign the same. Certainly the parties who have already signed the contracts have had ample opportunity to consider the contracts and the effect of the same on their own interests in California and it would seem only reasonable and just that the interests of Nevada and Arizona be permitted an opportunity to examine the contracts before their final legal status is determined.

I am sure that the Nevada Colorado River Development Commission will be willing to cooperate in every way in expediting a hearing so that no substantial delay would occur in finally presenting the matter for the consideration of Congress.

Unless these differences can be satisfactorily adjusted in such a hearing the action of Congress in considering appropriations under the act would be greatly delayed, if not altogether obstructed. I sincerely hope that you will concur in the suggestion of not signing these contracts until such a hearing is held, with the view of adjusting differences which otherwise may prove to be irreconcilable and prevent the construction of the dam.

Sincerely yours,

TASKER L. ODDIE.

THE SECRETARY OF THE INTERIOR,
Washington, April 29, 1930.

Hon. TASKER L. ODDIE,
United States Senate.

MY DEAR SENATOR ODDIE: I am inclosing copies of the contracts for sale of power on the Boulder Canyon project, which have just been received. I have discussed with you heretofore the various provisions which affect Nevada which have been incorporated in the contract, and am transmitting an estimate to-day to the Director of the Budget for commencement of construction.

Very truly yours,

RAY LYMAN WILBUR.

CONTRACT NO. 1

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION.

BOULDER CANYON PROJECT

CONTRACT FOR ELECTRICAL ENERGY

(1) This contract, made this 26th day of April, 1930, pursuant to the act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the reclamation law, and particularly pursuant to the act of Congress approved December 21, 1928 (43 Stat. 1057), designated the Boulder Canyon project act, between the United States of America, hereinafter referred to as the United States, acting for this purpose by Ray Lyman Wilbur, Secretary of the Interior, hereinafter styled the Secretary, and the Metropolitan Water District of Southern California, a public corporation, organized and existing under and by virtue of the laws of the State of California, hereinafter styled the district:

Witnesseth:

EXPLANATORY RECITALS

(2) Whereas for the purpose of controlling the floods, improving navigation and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy, the Secretary, subject to the terms of the Colorado River compact, is authorized to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon, adequate to create a storage reservoir of a capacity of not less than 20,000,000 acre-feet of water; also to construct, equip, operate, and maintain at or near said dam, or cause to be constructed, a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from said reservoir; and

(3) Whereas after full consideration of the advantages of both the Black Canyon and Boulder Canyon dam sites, the Secretary has determined upon Black Canyon as the site of the aforesaid dam, hereinafter styled the Boulder Canyon Dam, and has determined that the revenues provided for by this contract, together with other contracts in accordance with the provisions of the Boulder Canyon project act, are adequate in his judgment to insure payment of all expenses of operation and maintenance of the Boulder Canyon Dam and appurtenant works incurred by the United States, and the repayment within 50 years from the date of completion of said works of all amounts advanced to the Colorado River Dam fund under subdivision (b) of section 2 of the Boulder Canyon project act, together with interest thereon made reimbursable under said act; and

(4) Whereas the United States proposes to enter into an agreement with the city of Los Angeles and Southern California Edison Co. (Ltd.) severally (hereinafter referred to as the lessees) for the lease and the operation and maintenance of a Government-built power plant to be constructed at Boulder Canyon Dam, together with the right to generate electrical energy, a copy of which said proposed lease is attached hereto, marked "Exhibit A," and by this reference made a part hereof, wherein the Secretary has reserved the authority to and in consideration of the execution thereof is authorized by each of the aforesaid lessees severally to contract with the other allottees named in the allocation set forth therein for the furnishing of energy to such allottees at transmission voltage in accordance with the allocation to each allottee, and the Secretary is therein granted by each lessee severally the power in accordance with the provisions thereof to enforce as against each lessee the rights to be acquired by such other allottees by contracts to be entered into with the United States; and

(5) Whereas the district is desirous of entering into a contract with the United States providing for the delivery to the district each year from the Boulder Canyon Reservoir up to but not to exceed 1,050,000 acre-feet of water, and, in connection therewith and incident thereto, the district is desirous also of entering into a contract for the purchase of electrical energy to be generated at the power plant to be leased, as aforesaid, to the city of Los Angeles (hereinafter referred to as the city) and Southern California Edison Co. (Ltd.) (hereinafter referred to as the company) to aid in the transportation of such water supply;

(6) Now, therefore, in consideration of the mutual covenants herein contained, the parties hereto agree as follows, to wit:

ALLOCATION OF ELECTRICAL ENERGY

(7) The United States will cause to be delivered to the district under and in pursuance of and subject to the provisions of the aforesaid proposed lease, attached hereto as Exhibit A, for a period of 50 years from the date at which energy is ready for delivery to the city, as announced by the Secretary, in accordance with the following allocation, to wit:

Of firm energy

(A) To the State of Nevada, for use in Nevada, not exceeding 18 per cent of said total firm energy.

(B) To the State of Arizona, for use in Arizona, not exceeding 18 per cent of said total firm energy.

Should either of the States not take its full 18 per cent allocation within a period of 20 years hereof, the other may then contract for the energy not so taken up to 4 per cent of the total firm energy, provided that the combined amount used by the two States shall not at any time exceed 36 per cent of such total firm energy.

(C) To the Metropolitan Water District of Southern California so much energy as may be needed and used for pumping Colorado River water into and in its aqueduct for the use of such district within the following limits:

(1) Not exceeding 36 per cent of said total firm energy; plus

(2) All secondary energy developed at the Boulder Dam power plant, as provided in article 14 hereof; plus

(3) So much of the firm energy allocated to the States, the city, and the company as may not be in use by them. Energy allocated to the States, but not in use by them, shall be released to the district by the two lessees equally (unless they agree upon a different ratio) as follows:

(a) If the district makes a firm contract with the Secretary for the balance of the lease period for part or all of such unused States' energy (subject to the first right of the States thereto), such contract shall be made effective upon two years' written notice to the Secretary and compensation to the lessees, respectively, for main transmission line property rendered idle.

(b) If the district does not so make a firm contract for such energy, then energy allocated to the States, but not in use by them, shall be released to the district upon not less than 15 months' written notice to the Secretary and at such compensation as the district and such lessees, respectively, may agree upon to cover cost and overhead of replacing energy which otherwise would have been received at the Pacific coast end of the main transmission lines by the lessees, respectively. Such cost shall include interest on and depreciation and operation and maintenance of the plant capacity while required for the generation of such substitute energy; and also appropriate allowance for interest on and maintenance and depreciation of plant capacity rendered idle because of cessation of generation of such substitute energy until such time as such plant capacity would otherwise have been installed by the lessees, respectively, for their own requirements. If the district and the respective lessees fail to agree on such compensation, such energy shall nevertheless be released to the district, and the disagreement shall be determined in accordance with article 22 (a) hereof. Such determination shall include allowance for items of cost and overhead as specified in this paragraph. Pending such determination, energy so released shall be paid for by the district at the rate for firm energy, but the determination of compensation under article 22 (a) hereof shall not be controlled by such rate.

During any year beginning June 1 the district shall not use any secondary energy or any unused State energy until it has first used, subsequent to June 1 next preceding, an amount of firm energy equivalent to one-twelfth of the amount of firm energy it is obligated to take and/or pay for annually, multiplied by the number of months elapsed since June 1 next preceding.

(4) If, due to temporary deficiency in secondary energy regularly used by the district, substitute energy is requested by the district in excess of the energy made available under the foregoing subparagraph (3) (b), the city and/or the company may release so much energy as may be practicable on the same terms as provided in subsection (3) (b) preceding.

(D) To the municipalities of Anaheim, Beverly Hills, Burbank, Colton, Fullerton, Glendale, Newport Beach, Pasadena, Riverside, San Bernardino, and Santa Ana (referred to herein as "the municipalities"), 6 per cent in all, to be allocated between them as they may agree; but if no agreement is submitted to the Secretary on or before April 15, 1931, the Secretary shall determine the allocation of each.

(E) To the city of Los Angeles, 13 per cent.

(F) To Southern California Edison Co. (Ltd.), the Southern Sierras Power Co., the San Diego Consolidated Gas & Electric Co., and the Los Angeles Gas & Electric Corporation, referred to herein as the companies, 9 per cent in all, division whereof between the companies shall be made according to mutual agreement among them, if possible. If no such agreement is submitted to the Secretary on or before April 15, 1931, the Secretary shall determine the allocation of each.

The foregoing allocations are subject to the following conditions:

(i) So much of the energy allocated to the States (36 per cent of the firm energy), and not in use by them, or failing their use, by the district for the above purposes, shall be taken and paid for one-half by the city and one-half by the company.

(ii) All of the energy allocated to the municipalities may be contracted for in compliance with regulations of the Secretary, by any one or more of them, as they may agree, on or before April 15, 1931. So much of the energy allocated to the municipalities as is not so contracted for, or if contracted for not used by them directly or under contract for municipal purposes and/or distribution to their inhabitants, shall be taken and paid for by the city.

(iii) So much of the energy allocated to the Southern Sierras Power Co., the San Diego Consolidated Gas & Electric Co., and the Los Angeles Gas & Electric Corporation as is not firmly contracted for by them, severally, in compliance with regulations of the Secretary on or before April 15, 1931, shall be taken and paid for by the company.

(iv) If any allottee is permitted by the United States to divert water from the reservoir, at a time when the reservoir is not spilling, in consequence of which the amount of energy which would have been utilized is diminished, such diminution shall be debited to the allocation of firm energy herein made to such allottee; and charge for the energy equivalent of such diversion shall be made, and the amount of energy which the allottee shall otherwise be obligated to take and pay for hereunder shall be correspondingly reduced.

The reservoir shall be considered as spilling whenever water is being discharged in excess of the amount used for the generation of power, whether such waste occurs over the spillway or otherwise.

(v) Each of the States of Arizona and Nevada may, from time to time within the period of the aforesaid lease, contract for energy for use within such State in any amount until the total allocated respectively to each is in use as provided above; and may terminate such contract, or contracts, without prejudice to the right to again contract for such energy. All such contracts shall be executed with the Secretary. A contract requiring 1,000 horsepower (of maximum demand) or less may become effective or be terminated on six months' written notice of requirement or termination given the director by the State: *Provided,* That the notice given shall be 2 years if in the 12 months preceding said notice of demand the total increment to such State has exceeded 5,000 horsepower of maximum demand or if in the 12 months preceding said notice of termination the decrement to such State has exceeded 5,000 horsepower of maximum demand. In all cases the director shall immediately transmit such notice to each lessee. Whenever the amount in use is in excess of 5,000 horsepower of maximum demand, the lessees, respectively, shall be compensated for property rendered idle by use of such excess in such amount as the Secretary shall determine to be equitable. Firm energy not contracted for by the States shall be available for use by the district as herein elsewhere provided, and if not in use by the States and/or the district, shall be taken and paid for equally by the two lessees. No right which may be available to a State under section 5 (c) of the Boulder Canyon project act to execute a firm contract for electrical energy for use within the State shall be impaired by any provision of this contract.

Of secondary energy

The district shall have the right to purchase and use all secondary energy as provided in article 9 and article 14 hereof for the purposes stated in the first paragraph of subdivision (C) of this article. The city and the company shall each have the right to purchase and use one-half of all secondary energy not used by the district. Any such energy not used by one lessee shall be available, for the time being, to the other. If secondary energy is not taken by the district, the city, and/or the company, then and in such event, the United States reserves the right to take, use, and dispose of such energy, from time to time, as it sees fit, giving credit therefor as provided in article 12 of Exhibit A hereof.

Of firm energy allocated to but not used by the district

In the event the district shall fail for any reason to use all or any of the firm energy herein allotted to it for the only purpose for which said firm energy is allotted to it, that is, for pumping water into and in its aqueduct, then no disposition shall be made of such firm energy by the Secretary without first giving to a successor to the district which may undertake to build or maintain a Colorado River aqueduct the opportunity to take said firm energy for the same purpose and under the same terms as those to which the district was obligated.

In the event no such successor takes said firm energy as provided above, then no disposition of such firm energy shall be made by the Secretary without first giving to each lessee the opportunity to contract on equal terms and conditions, to be prescribed by the Secretary, for one-half of such energy, together with such portion of the remainder as the other lessee shall not elect to take.

Of firm energy not disposed of under the foregoing allocations

The United States reserves the right, in case the dam which it erects provides a maximum water surface elevation in excess of 1,222 feet above sea level (U. S. Geological Survey datum), and thereby increases the quantity of firm energy above the quantity of 4,240,000,000 kilowatt-hours allocated above, to dispose of such increase, but not to exceed 90,000,000 kilowatt-hours per year (June 1 to May 31, inclusive) to any municipality or municipalities by firm contract executed with the Secretary on or before April 15, 1931. Such disposition shall be without prejudice to any provision of this lease or of the allocation above referred to. So much of such additional energy as is not so contracted for shall be taken and paid for by the city. Generation of such additional energy shall in any event be effected by the city.

Installation of machinery

(8) The district shall have opportunity to be heard by the Secretary or his representatives upon the design, capacity, and cost of machinery to be provided and installed as stated in article 8 of Exhibit A hereof before contracts therefor are let.

FIRM AND SECONDARY ENERGY DEFINED

(9) The amount of firm energy for the first year of operation—June 1 to May 31, inclusive—following the date of the completion of the dam as announced by the Secretary shall be defined as being 4,240,000,000 kilowatt-hours at transmission voltage. For every subsequent year the amount defined as firm energy shall be decreased by 8,760,000 kilowatt-hours from that of the previous year.

Nevertheless, if it be determined by the Secretary that the rate of decrease of kilowatt-hours per year as above stated is not in accord

with actual conditions, the Secretary reserves the right to fix a lesser rate for any year—June 1 to May 31, inclusive—in advance.

If the dam erected by the United States provides a maximum water surface elevation in excess of 1,222 feet above sea level—United States Geological Survey datum—the United States reserves the right to dispose of additional firm energy thereby made available, not to exceed 90,000,000 kilowatt-hours per year, subject to pro rata of the 8,760,000 kilowatt-hours annual diminution above provided for.

The term "secondary energy" wherever used herein shall mean all electrical energy generated in one year—June 1 to May 31, inclusive—in excess of the amount of firm energy as hereinabove defined, available in such year.

If by reason of international obligations arising through treaty or otherwise subsequent to the effective date of this contract, or by reason of interference with the program of construction and/or operation of the dam as provided for and contemplated by this contract, or by reason of other contingencies not now foreseen, the amount of firm energy available through the release of water from the Boulder Canyon Reservoir shall in fact be less than the amount of firm energy as above defined, then in any such event the obligation of the district to take and pay for its allocation of firm energy shall be reduced in an amount corresponding to such change. If for any reason the United States shall be wholly unable to fulfill its obligations hereunder in respect of the delivery of water, then the district or either of them, may terminate this contract.

The right of the district and/or lessees to take and pay for energy at the rate for secondary energy after discharge of such party's obligation to the United States to pay for energy at the rate for firm energy, shall not be impaired by reason of the fact that another allottee has not discharged its obligation to pay for energy at the rate for firm energy.

GENERATING AGENCIES

(10) In accordance with designation heretofore made by the Secretary, generation of energy allocated to the district shall be effected by the city. Nevertheless, this provision is subject to the following conditions:

(i) Should it prove of material economic advantage to the district to have a portion of its energy generated as offpeak energy, the city, after generating energy for the district to the full extent of the generating capacity which has been installed at the request of the district with allowance for the contemplated margin of reserve capacity, shall also generate such additional energy as may be needed by the district and as can be generated offpeak with other generating capacity leased to and being operated by the city at such times as such use does not conflict with the needs of the city and other allottees for whom the city is generating energy. The district will pay for the offpeak use of such other generating capacity, together with an allowance for a fair proportion of the operation and maintenance expenses, at rates to be agreed upon between the district and the city and approved by the Secretary, and if they are unable to agree then at a rate to be determined by the Secretary. Should the amount of energy which can be obtained by the district from the generating capacity which has been installed at the request of the district and from other capacity leased to and being operated by the city be insufficient to satisfy the requirements of the district, then the district may arrange with Southern California Edison Co. (Ltd.) for generation of such offpeak energy as may be needed by the district at such times and not obtainable from the city to such an extent as such generation does not conflict with the needs of the company and other allottees for whom the company is generating energy. Charge shall be made against the district for such service at the rate to be agreed upon between the district and the company and approved by the Secretary, and if they are unable to agree then at a rate to be determined in accordance with article 22 (a) hereof.

(ii) Disputes and disagreements between any allottee and the lessee generating energy for it with respect to such generation and/or the cost thereof shall be determined by the Secretary unless otherwise specifically provided in this contract.

(iii) Except for offpeak power furnished the district, which shall be as provided in paragraph (i) of this article, all generation shall be effected at cost, as determined in accordance with article 12 of Exhibit A hereof.

DELIVERY OF ELECTRICAL ENERGY

(11) (a) Energy shall be ready for delivery to the city and to the municipalities, including those contracting under the last paragraph of article 7 hereof, when the Secretary announces that 1,250,000,000 kilowatt-hours of energy per year is ready for delivery.

(b) Energy shall be ready for delivery to the district when the Secretary announces that 2,000,000,000 kilowatt-hours of energy per year is available, which date, however, shall not be sooner that one year after energy is ready for delivery to the city: *Provided, however,* That the time when energy is ready for delivery to the district may be advanced subject to the approval of the Secretary, should the district so request, and that in such case the city shall be compensated by the district for interest and depreciation on and maintenance and operation of its main transmission line in case the total energy available to the city is reduced below 1,250,000,000 kilowatt-hours per annum, in the proportion that such kilowatt-hours available to the city is less than 1,250,000,000.

(c) Energy shall be ready for delivery to the company when the Secretary announces that water capable of generating 4,240,000,000 kilowatt-hours of energy per year is available, which date, however, shall not be sooner than three years after commencement of delivery of energy to the city and which shall not be until the water surface in Boulder Canyon Reservoir on August 1 immediately preceding has reached an elevation of 1,150 feet above sea level (U. S. Geological Survey datum).

(d) Upon written notification from the Secretary that generation equipment is ready for operation by it and water is available for generating energy therefrom, each lessee will be required to assume the operation and maintenance of its respective portion of the power plant, and thereafter the district will look to such lessee, severally, and not to the United States for compensation for injury and/or damages of any kind which may in any manner arise out of the operation and maintenance of the portion of such plant leased to it.

CHARGES TO BE PAID THE UNITED STATES

(12) In consideration of this contract the district agrees:

(1) To pay the United States for the use of falling water for generation of energy for the district (except as otherwise provided in article 15 hereof), as follows:

(a) One and sixty-three hundredths mills per kilowatt-hour (delivered at transmission voltage) for firm energy;

(b) One-half mill per kilowatt hour (delivered at transmission voltage) for secondary energy;

(2) To pay the United States, for credit to the lessees, on account of use of the leased equipment as herein elsewhere provided; and

(3) To pay the United States, for credit to the lessees, on account of maintenance of said equipment, including repairs to and replacements of machinery, as herein elsewhere provided.

At the end of 15 years from the date of execution of this contract and every 10 years thereafter the above rates of payment for firm and secondary energy shall be readjusted upon demand of any party hereto, either upward or downward as to price, as the Secretary may find to be justified by competitive conditions at distributing points or competitive centers.

The rate for falling water for generation of firm energy, which shall be uniform for both lessees provided for by any such readjustment, shall be arrived at by deducting from the price of electrical energy justified by competitive conditions at distributing points or competitive centers (1) all fixed and operating costs of transmission to such points; (2) all fixed and operating costs of such portion of the power-plant machinery as is to be operated and maintained by the several lessees, including the cost of repairs and replacements, together with such readjustment as to replacements as is provided for in paragraph 3 in this article, it being understood that such readjusted rates shall under no circumstances exceed the value of said energy, based upon competitive conditions at distributing points or competitive centers.

"In arriving at the respective rates for 'firm energy' and 'secondary energy' as fixed herein, recognition has been given to the fact that 'secondary energy' can not be relied upon as being at all times available, but is subject to diminution or temporary exhaustion; whereas 'firm energy' is the amount of energy agreed upon as being available continuously as required during each year of the contract period. In the readjustment of the rate for 'secondary energy' account shall be taken of the foregoing factors."

The charges agreed to be paid by the district to the United States for credit to the city as generating agency in this article shall be such proportion of the cost incurred by such generating agency as it and the district may agree.

The term "cost," as used with reference to generating energy, shall include a proper proportionate allowance for amortization for the cost of machinery and equipment as provided in paragraph a of article 9 of Exhibit A hereof, a proper proportionate part of any annuity set up in accordance with regulations of the Secretary provided for in subdivision 3 of article 16 of Exhibit A hereof for the purpose of meeting the obligation of the city to make replacements, and a proper proportionate part of the actual outlay of the city for operating such machinery and equipment and keeping the same in repair, including reasonable overhead charges. The extent of the allowance for the several items in the event of disagreement between the city and district and the system of accounting therefor shall be prescribed by the Secretary under uniform regulations as required by section 6 of the Boulder Canyon project act.

MONTHLY PAYMENTS AND PENALTIES

(13) The district shall pay monthly for energy in accordance with the rates established or provided for herein, and for the generation thereof as provided in article 12.

When energy taken in any month is not in excess of one-twelfth of the minimum annual obligation, bill for such month shall be computed at the rate for firm energy in effect when such energy was taken on the basis of the actual amount of energy used during such month. All energy used during any month in excess of one-twelfth of the minimum

annual obligation shall be paid for at the rate for secondary energy in effect when such energy was taken; provided, however, that the secondary rate shall not apply to any energy taken during any month unless and until an amount of energy equivalent to one-twelfth of the minimum annual obligation has been taken for all months beginning with the month of June immediately preceding; provided, however, that the bill for the month of May shall not be less than the difference between the minimum annual payment, as provided in article 14 hereof, and the sum of the amounts charged for firm energy during the preceding 11 months. The United States will submit bills to the district by the fifth of each month immediately following the month during which the energy is generated, and payments shall be due on the first day of the month immediately succeeding. If such charges are not paid when due, a penalty of 1 per cent of the amount unpaid shall be added thereto, and thereafter an additional penalty of 1 per cent of the amount unpaid shall be added on the first day of each calendar month thereafter during such delinquency.

The monthly charge for generation of such energy to be credited to the generating agency shall be in such amount as may be determined in accordance with article 12 hereof.

MINIMUM ANNUAL PAYMENT

14. The total payments made by the district for firm energy available in any year (June 1 to May 31, inclusive), whether any energy is taken by it or not, exclusive of its payments for credit to the generating agency, shall be not less than the number of kilowatt-hours of firm energy which the district is obligated to take and/or pay for during said year, multiplied by $0.00163, or multiplied by the adjusted rate of payment for firm energy in case the said rate is adjusted as provided in article 12 hereof. For a fractional year at the beginning or end of the contract period, the minimum annual payment for firm energy shall be proportionately adjusted in the ratio that the number of days water is available for generation of energy in such fractional year bears to 365; provided, however, that in order to afford a reasonable time for the district to absorb the energy contracted for, the minimum annual payments by it for the first three years after energy is ready for delivery to it, as announced by the Secretary, shall be as follows, in percentages of the ultimate annual obligation, to take and/or pay for firm energy:

	Per cent
First year	55
Second year	70
Third year	85
Fourth year and all subsequent years	100

During said absorption period, if the quantity of energy taken in any one year (June 1 to May 31, inclusive) is in excess of the above percentages of the ultimate obligation during such year to take and/or pay for firm energy, such excess shall be paid for at the rate for secondary energy; provided further, that the minimum annual payment shall be reduced in case of interruptions or curtailment of delivery of water as provided in article 16 hereof.

The total payments made by the district for generation of such energy, to be credited to the generating agency, shall be determined in accordance with article 12 hereof.

NO ENERGY TO BE DELIVERED WITHOUT PAYMENT

(15) Unless the written consent of the Secretary be first obtained, no electrical energy shall be generated for, or delivered to, the district if it shall be in arrears for more than 12 months in the payment of any charge and/or penalty due or to become due the United States hereunder, whether for its own use or for credit to the generating agency.

INTERRUPTIONS IN DELIVERY OF WATER

(16) The United States will deliver water continuously to each lessee in the quantity, in the manner, and at the times necessary for the generation of the energy which each of said lessees has the right and/or obligation to generate under this contract in accordance with the load requirements of each of said lessees, and of allottees for which the respective lessees are generating agencies, excepting only that such delivery shall be regulated so as not to interfere with the necessary use of said Boulder Canyon Dam and Reservoir for river regulation, improvement of navigation, flood control, irrigation, or domestic uses, and the satisfaction of present perfected rights in or to the waters of the Colorado River, or its tributaries, in pursuance of article 8 of the Colorado River compact, and this contract is made upon the express condition, and with the express covenant, that the rights of the district to the waters of the Colorado River, or its tributaries, are subject to, and controlled by, the Colorado River compact. The United States reserves the right temporarily to discontinue or reduce the delivery of water for the generation of energy at any time for the purpose of maintenance, repairs and/or replacements, or installation of equipment, and for investigations and inspections necessary thereto; provided, however, that the United States shall except in case of emergency give to the lessees reasonable notice in advance of such temporary discontinuance or reduction, and that the United States shall make such inspections and perform such maintenance and repair work after consultation with the lessees at such times and in such manner as will cause the least inconvenience to the lessees, and shall prosecute such work with diligence, and, without unnecessary delay, will resume delivery of water so discontinued or reduced.

Should the delivery of water be discontinued or reduced below the amount required severally for the normal generation of firm energy for the payment of which said district has hereby obligated itself, the total number of hours of such discontinuance or reduction in any year shall be determined by taking the sum of the number of hours during which the delivery of water is totally discontinued and the product of the number of hours during which the delivery of water is partially reduced and the percentage of said partial reduction below the actual quantity of water required by the lessees severally for the normal generation of firm energy. Total or partial reductions in delivery of water which do not reduce the power output below the amount required at the time by such lessee for the normal generation of firm energy will not be considered in determining the total hours of discontinuance in any year. The minimum annual payment specified in article 14 hereof shall be reduced by the ratio that the total number of hours of such discontinuance bears to 8,760. In no event shall any liability accrue against the United States, its officers, agents, and/or employees for any damage, direct or indirect, arising on account of drought, hostile diversion, act of God or of the public enemy, or other similar cause; nevertheless interruptions in delivery of water occasioned by such causes shall be governed as hereinabove provided in this article.

MEASUREMENT OF ENERGY

(17) The energy received by the district shall be measured at transmission voltage at the point where the district's transmission lines connect to the switching station at Boulder Canyon Dam called the point of delivery, or, at the option of the Secretary, the energy received by the district shall be measured at the low-voltage side of the substations serving the district, in which event suitable correction shall be made in the amounts of energy as measured to cover all losses between the points of measurement and the point of delivery at transmission voltage at Boulder Canyon Dam. Suitable meter equipment satisfactory to the Secretary for measuring the energy received by the district shall be provided and maintained by and at the expense of the district. Meters may be tested at any reasonable time upon the request of either the United States or the district, and in all events they shall be tested at least once each year. If the test discloses that the error of any meter exceeds 1 per cent, such meter shall be adjusted so that the error does not exceed one-half of 1 per cent. Meter equipment shall be tested by means of suitable testing equipment, which will be provided by the United States, and which shall be calibrated by the United States Bureau of Standards as often as requested by either the United States or the district. Meters shall be kept sealed, and the seal shall be broken only in the presence of representatives of both the United States and the district, and likewise all tests of meter equipment shall be conducted only when representatives of both the United States and the district are present.

INSPECTION BY THE UNITED STATES

(18) The Secretary or his representatives shall at all times have the right of ingress to and egress from all works of the district for the purpose of inspection, repairs, and maintenance of the works of the United States and for all other proper purposes. The Secretary or his representatives shall also have free access at all reasonable times to the books and records of the district relating to the disposal of electrical energy, with the right at any time during office hours to make copies of or from the same.

TRANSMISSION

(19) (a) The city having, in article 25 of Exhibit A hereof, undertaken that it shall operate and maintain at cost, including allowance for necessary overhead expense, the lines required for transmitting all Boulder Canyon power from the power plant to the pumping plants of the district, allocated to and used by the district for pumping water into and in its aqueduct, provided that in the event it should prove materially to the advantage of the district at any time during the 50-year period of this lease, the district may operate and maintain such transmission lines itself; and provided further that in the event of disagreement or dispute between the district and the city as to such matter such disagreement shall be determined as provided in article 22 (a) hereof; the Secretary will, if by such determination energy allocated to and used by the district is to be transmitted by the district instead of the city, cause delivery of energy at transmission voltage to be made accordingly.

DURATION OF CONTRACT

(20) This contract shall become effective as soon as the first act of Congress appropriating funds for commencement of construction of Boulder Canyon Dam has become law, and as to the district shall remain in effect until the expiration of a period of 50 years from the date at which energy is ready for delivery to the city, as determined by the Secretary. The holder of any contract for electrical energy, including the district, not in default thereunder, shall be entitled to a renewal thereof upon such terms and conditions as may be authorized or required under the then existing laws and regulations, unless the property of such holder dependent for its usefulness on a continuation of the contract be purchased or acquired, and such contractor be compensated

for damages to its property, used and useful in the transmission and distribution of such electrical energy and not taken, resulting from the termination of the supply.

CONTRACT MAY BE TERMINATED IN CASE OF BREACH

(21) If the district shall be in arrears for more than 12 months in the payment of any charge and/or penalty due or to become due to the United States hereunder, and shall not have obtained an extension of time for payment thereof, or, if such extension be obtained, has not made such payment within the time as extended, then the Secretary reserves the right thereafter, and upon two years' written notice to the district, to terminate this contract and dispose of the energy herein allocated as he may see fit, provided he shall first give opportunity to each lessee to contract on equal and uniform terms and conditions, to be prescribed by the Secretary, for one-half of such energy, together with such portion of the remainder as the other lessee shall not elect to take, and provided further, that such disposition shall be subject to the condition that the district shall have the right at any time within 10 years from date of the first of the defaults or breaches for which the contract is terminated, to become reinstated hereunder by payment to the United States of all arrearages and penalties, if any, together with any and all loss incurred by the United States by reason of such termination, and compensation to the contractor or contractors for equipment rendered idle by such reinstatement. In case of disagreement or dispute as to any of the items so to be paid the same shall be determined as provided in article 22 hereof. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provisions hereof, or of a subsequent breach of such provision.

DISPUTES AND DISAGREEMENTS

(22) (a) Disputes or disagreements arising under this contract between the district and any lessee or other allottee shall be arbitrated by three arbitrators, except where otherwise provided in this contract. The district shall name one arbitrator, and the other disputant shall name one. These two shall name the third. If either disputant has notified the other that arbitration is demanded and that it has named an arbitrator, and if thereafter the other disputant fails to name an arbitrator for 15 days, the Secretary, if requested by either disputant, shall name such arbitrator, who shall proceed as though named by the disputant. The two arbitrators so named shall meet within five days after appointment of the second and name the third. If they fail to do so, the Secretary will, on request by either disputant or arbitrator, name the third. A decision by any two of the three arbitrators shall be binding on the disputants and enforceable by court proceedings or by the Secretary in his discretion. Arbitration as herein provided, or the failure of the arbitrators to render a decision within six months of appointment of the third arbitrator, shall be a condition precedent to suit by either disputant against the other upon the matter in dispute.

(b) Disputes or disagreements between the United States and the district as to the interpretation or performance of the provisions of this contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract, and the disputants agree to submit the matter to arbitration, the district shall name one arbitrator, and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within five days after their first meeting, such arbitrators not so elected shall be named by the senior judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

USE OF PUBLIC AND RESERVED LANDS OF THE UNITED STATES

(23) The use is authorized of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines to transmit electrical energy generated at Boulder Canyon Dam, together with the use of such public and reserved lands of the United States as may be designated by the Secretary from time to time for camp sites, residences for employees, warehouses, and other uses incident to the operation and maintenance of the power plant and incidental works.

PRIORITY OF CLAIMS OF THE UNITED STATES

(24) Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

TRANSFER OF INTEREST IN CONTRACT

(25) No voluntary transfer of this contract, or of the rights hereunder, shall be made without the written approval of the Secretary; and any successor or assign of the rights of the district, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the conditions of the Boulder Canyon project act, and also subject to all the provisions and conditions of this contract to the same extent as though such successor or assign were the original contractor hereunder; provided that a mortgage or trust deed or judicial sale made thereunder shall not be deemed voluntary transfers within the meaning of this article.

RULES AND REGULATIONS

(26) This contract is subject to such rules and regulations conforming to the Boulder Canyon project act as the Secretary may from time to time promulgate; provided, however, that no right of the district hereunder shall be impaired or obligation of the district hereunder shall be extended thereby; and provided further that opportunity for hearing shall be afforded the district by the Secretary prior to promulgation thereof.

AGREEMENT SUBJECT TO COLORADO RIVER COMPACT

(27) This contract is made upon the express condition and with the express understanding that all rights hereunder shall be subject to and controlled by the Colorado River compact, being the compact or agreement signed at Santa Fe, N. Mex., November 24, 1922, pursuant to act of Congress approved August 19, 1921, entitled "An act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," which compact was approved in section 13 (a) of the Boulder Canyon project act.

PERFORMANCE BOND

(28) The district shall upon demand of the Secretary furnish and keep current for the use and benefit of the United States a performance bond in a penal sum equal to the annual obligation assumed by it hereunder; or in lieu thereof deposit security satisfactory to the Secretary, conditioned upon the faithful performance of this contract. In case security is deposited the Secretary may make such disposition of the same as will accomplish the purpose for which submitted.

CONTINGENT UPON APPROPRIATIONS

(29) This contract is subject to appropriations being made by Congress from year to year of moneys sufficient to do the work provided for herein and to there being sufficient moneys available in the Colorado River Dam fund to permit allotments to be made for the performance of such work. No liability shall accrue against the United States, its officers, agents, or employees by reason of sufficient moneys not being so appropriated or on account of there not being sufficient moneys in the Colorado River Dam fund to permit of said allotments. This agreement is also subject to the condition that if Congress fails to appropriate moneys for the commencement of construction work within five years from and after execution hereof, or if for any other reason construction of Boulder Canyon Dam is not commenced within said time and thereafter prosecuted to completion with reasonable diligence, then and in such event either party hereto may terminate its obligations hereunder upon one year's written notice to the other party hereto.

TITLE TO REMAIN IN UNITED STATES

(30) As provided by section 6 of the Boulder Canyon project act, the title to Boulder Canyon Dam, Reservoir, plant, and incidental works shall forever remain in the United States.

REMEDIES UNDER CONTRACT NOT EXCLUSIVE

(31) Nothing contained in this contract shall be construed as in any manner abridging, limiting, or depriving the United States of any means of enforcing any remedy either at law or in equity for the breach of any of the provisions hereof which it would otherwise have.

MEMBER OF CONGRESS CLAUSE

(32) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

In witness whereof the parties hereto have caused this contract to be executed the day and year first above written. (Executed in quadruplicate original.)

THE UNITED STATES OF AMERICA,
By ——— ———,
Secretary of the Interior.

THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA,
By ——— ———,
Chairman of the Board of Directors.

Approved as to form:
W. B. MATHEWS,
General Counsel.

Attest:
S. H. FINLEY,
Secretary of the Board of Directors.

I, S. H. Finley, secretary of the board of directors of the Metropolitan Water District of Southern California, a public corporation organized under the provisions of chapter 429, Statutes of California, 1927, and now existing under the provisions of said chapter 429, as amended by chapter 796, Statutes of California, 1929, do hereby certify that at a duly called meeting of the board of directors of said district, at which a quorum of said directors was present, held at Los Angeles, Calif., on the 25th day of April, 1930, a resolution was adopted, of which the following is a full, true, and correct copy:

"Resolution No. 39

"Whereas the Secretary of the Interior of the United States of America has allocated to the Metropolitan Water District of Southern California certain hydroelectric power to be developed as the result of the construction by said United States of the Boulder Canyon Dam, under and pursuant to the provisions of the Boulder Canyon project act; and

"Whereas only the said United States can make available to said district such hydroelectric power; and

"Whereas it is necessary that said district contract with said United States for such hydroelectric power, under and pursuant to the provisions of the aforesaid Boulder Canyon project act; and

"Whereas draft of such proposed contract has been presented by the said Secretary of the Interior to the board of directors of said district at its meeting held this 25th day of April, 1930, which said draft of proposed contract has been approved by said board of directors and ordered filed: Now, therefore be it

"*Resolved*, That the Metropolitan Water District of Southern California shall enter into a contract with the United States of America, acting by and through the Secretary of the Interior, for hydroelectric power to be developed as a result of the construction by said United States of said Boulder Canyon Dam, the said contract so to be entered into by said district to conform in substance to the aforesaid draft presented by the Secretary of the Interior to the board of directors of said district and approved and filed by order of said board of directors under date of April 25, 1930; provided that said contract before execution by said district shall be approved as to form by the general counsel; and be it further

"*Resolved*, That the chairman of the board of directors be, and he hereby is authorized and directed to sign and execute said contract on behalf of said district, and that the secretary of the board of directors be, and he hereby is authorized and directed to attest the execution of said contract and to affix the corporate seal of said district thereto."

I further certify that on the 26th day of April, 1930, the above resolution was still in full force and effect, and that on the said 26th day of April, 1930, W. P. Whitsett was chairman of the board of directors and S. H. Finley was secretary of the board of directors of said district, and that the foregoing contract to which this certificate is annexed conforms in substance to the draft of such contract presented by the Secretary of the Interior to the board of directors of said district and approved and filed under date of April 25, 1930, by order of said board of directors.

In witness whereof I have hereunto set my hand and affixed the seal of this district this 26th day of April, 1930.

[SEAL.] S. H. FINLEY,
Secretary of the Board of Directors of the Metropolitan Water District of Southern California.

CONTRACT NO. 2 AND EXHIBIT A REFERRED TO IN CONTRACT NO. 1

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF RECLAMATION.

BOULDER CANYON PROJECT

CONTRACT FOR LEASE OF POWER PRIVILEGE

(1) This contract, made this — day of April, 1930, pursuant to the act of Congress approved June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all of which acts are commonly known and referred to as the reclamation law, and particularly pursuant to the act of Congress approved December 21, 1928 (45 Stat. 1057), designated the Boulder Canyon project act, between the United States of America, hereinafter referred to as the United States, acting for this purpose by Ray Lyman Wilbur, Secretary of the Interior, hereinafter styled the Secretary; and, severally, the city of Los Angeles, a municipal corporation, hereinafter styled the city, acting for this purpose by its board of water and power commissioners, and Southern California Edison Co. (Ltd.), a private corporation, hereinafter styled the company, both of said corporations being organized and existing under the laws of the State of California, and hereinafter styled the lessees.

Witnesseth:

EXPLANATORY RECITALS

(2) Whereas for the purpose of controlling the floods, improving navigation, and regulating the flow of the Colorado River, providing for storage and for the delivery of the stored waters for reclamation of public lands and other beneficial uses exclusively within the United States, and for the generation of electrical energy, the Secretary, subject to the terms of the Colorado River compact, is authorized to construct, operate, and maintain a dam and incidental works in the main stream of the Colorado River at Black Canyon or Boulder Canyon, adequate to create a storage reservoir of a capacity of not less than 20,000,000 acre-feet of water; also to construct, equip, operate, and maintain at or near said dam, or cause to be constructed, a complete plant and incidental structures suitable for the fullest economic development of electrical energy from the water discharged from said reservoir; and

(3) Whereas, after full consideration of the advantages of both the Black Canyon and Boulder Canyon Dam sites, the Secretary has determined upon Black Canyon as the site of the aforesaid dam, hereinafter styled the Boulder Canyon Dam, and has determined that the provision for revenues made by this contract, considering all of its provisions, including article 16, together with other contracts in accordance with the provisions of the Boulder Canyon project act, is adequate in his judgment to insure payment of all expenses of operation and maintenance of the Boulder Canyon Dam and appurtenant works incurred by the United States, and the repayment within 50 years from the date of completion of said works of all amounts advanced to the Colorado River Dam fund under subdivision (b) of section (2) of the Boulder Canyon project act, together with interest thereon made reimbursable under said act; and

(4) Whereas the lessees are desirous severally of entering into contracts of lease of units of a Government-built electrical plant with right to generate electrical energy:

(5) Now, therefore, in consideration of the mutual covenants herein contained the parties hereto agree as follows, to wit:

CONSTRUCTION BY UNITED STATES

(6) The United States will, at its own cost, construct in the main stream of the Colorado River at Black Canyon a dam, creating thereby at the date of completion a storage reservoir having a maximum water surface elevation at about 1,222 feet above sea level (U. S. Geological Survey datum) of a capacity of about 29,500,000 acre-feet. The United States will also construct in connection therewith outlet works, pressure tunnels, penstocks, power-plant building, and furnish and install generating, transforming, and high voltage switching equipment for the generation of the energy allocated to the various allottees respectively as stated in article 14 hereof.

OPERATION AND MAINTENANCE OF DAM

(7) The United States will operate and maintain the dam, reservoir, pressure tunnels, penstocks to but not inclusive of the shut-off valves at the inlets to the turbine casings, and outlet works, and will have full control of all water passing the dam for any and all purposes. The dam and reservoir will be operated and used: First, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses and satisfaction of present perfected rights in pursuance of article 8 of the Colorado River compact; and, third, for power.

INSTALLATION OF MACHINERY

(8) The machinery and equipment for the generation of power will be provided and installed and owned by the United States. The city and the company shall each notify the Secretary of the Interior, in writing, within two months after receipt of written notice from him that diversion of the Colorado River has been effected for the construction of Boulder Canyon Dam, as to their respective generating requirements in order that the United States may be able to determine the type and initial and maximum ultimate capacity of the generating equipment to be installed in the power plant. Generating units and other equipment to be installed by the United States shall be in sufficient number and of sufficient capacity to generate the energy allocated to and taken by the lessees and the various allottees, served by each lessee as stated in article 14 hereof, upon the load factors stated by the respective allottees with proper allowance for the combined load factors of all allottees served by each lessee. Each lessee shall give notice to the Secretary of the date at which it requires its generating equipment to be ready for operation, such notice to be given at least three years before said date. If a lesser number of generating units is initially installed, the United States will furnish and install, at a later date or from time to time on like terms, such additional units as with the original installation will generate the energy allocated. The city and the company shall each cooperate with the United States in the preparation of designs for the power plant, and in the preparation of plans and specifications for the machinery and equipment to be installed in connection therewith and required by each, respectively.

Each allottee (including lessees) shall have opportunity to be heard by the Secretary or his representatives upon the design, capacity, and cost of machinery before contracts therefor are let.

COMPENSATION FOR USE OF MACHINERY

(9) (a) Compensation for the use, for the periods of lease thereof, of machinery and equipment furnished and installed by the United States, for each lessee, respectively, for the generation of electrical energy, equal to the cost thereof, including interest charges at the rate of 4 per cent per annum, compounded annually from the date of advances to the Colorado River Dam fund for the purchase of such equipment and machinery to June 1 of the year next preceding the year when the initial installment becomes due under this article, shall be paid to the United States by the lessees, severally, in 10 equal annual installments, so as to amortize the total cost (including interest as fixed above), and interest thereafter upon such total cost at the rate of 4 per cent per annum. The first installment payable by each lessee shall be due on June 1 next following the date the machinery leased by such lessee is ready for operation and water is available therefor, as announced by

the Secretary, and the subsequent nine installments shall be paid on June 1 of each year thereafter.

(b) No charge shall be made against either lessee on account of cost of, or as compensation for the use of, machinery required to be installed in consequence of execution of a contract for electrical energy by a State pursuant to article 14 hereof, unless such machinery is to be used partially for the benefit of such lessee. In such event the charge made by the United States for compensation for the use thereof shall be adjusted between the State and such lessee as they may agree, or, if they fail to agree, then by the Secretary.

LEASE OF POWER PLANT

(10) (a) The United States hereby leases to the city for 50 years from the date at which energy is ready for delivery to the city, as announced by the Secretary, in accordance with article 11 hereof, such power plant units and corresponding plant facilities and incidental structures as may be necessary to generate the energy allocated to it and energy for those allottees for whom the city is designated the generating agency, together with the right to generate such electrical energy.

(b) The United States hereby leases to the company such power plant units and corresponding plant facilities and incidental structures as may be necessary to generate the energy allocated to it and energy for those allottees for whom the company is designated the generating agency, together with the right to generate such electrical energy, for a period beginning with the date at which the first of such power plant units is ready for operation and water is available therefor as announced by the Secretary, and ending at a time 50 years from the date at which energy is ready for delivery to the city, as provided in article 11 (a) hereof.

(c) The machinery and equipment under lease to either lessee shall be operated and maintained by such lessee without interference from or control by the other lessee, but subject nevertheless to the supervisory authority of the Secretary or his representative, under the terms of the lease.

(d) Subject to conditions hereinafter stated, the designation of generating agencies shall be as follows:

Generation of energy allocated to and used by the States of Nevada and Arizona shall be effected by the city.

Generation of energy allocated to the municipalities, including those contracting under the provisions of the last paragraph of article 14, shall be effected by the city.

Generation of energy allocated to the district shall be effected by the city.

Generation of energy allocated to the companies shall be effected by Southern California Edison Co. (Ltd.).

Nevertheless, the foregoing provisions are subject to the following conditions:

(i) Should it prove of material economic advantage to the district to have a portion of its energy generated as offpeak energy, the city, after generating energy for the district to the full extent of the generating capacity which has been installed at the request of the district, with allowance for the contemplated margin of reserve capacity, shall also generate such additional energy as may be needed by the district and as can be generated offpeak with other generating capacity leased to and being operated by the city at such times as such use does not conflict with the needs of the city and other allottees for whom the city is generating energy. The district will pay for the offpeak use of such other generating capacity together with an allowance for a fair proportion of the operation and maintenance expenses at rates to be agreed upon between the district and the city, and if they are unable to agree, to be determined by the Secretary.

Should the amount of energy which can be obtained by the district, from the generating capacity which has been installed at the request of the district and from other capacity leased to and being operated by the city, be insufficient to satisfy the requirements of the district, then the district may arrange with the company for generation of such offpeak energy as may be needed by the district at such times and not obtainable from the city, to such an extent as such generation does not conflict with the needs of the company and other allottees for whom the company is generating energy. Charge shall be made against the district for such service at the rate to be agreed upon between the district and the company, and if they are unable to agree, then at a rate to be determined in accordance with article 35 (a) hereof.

(ii) Disputes and disagreements between any allottee and the lessee generating energy for it, with respect to such generation, and/or the cost thereof, shall be determined by the Secretary unless otherwise specifically provided in this contract.

(iii) Except for offpeak power furnished the district which shall be as provided in paragraph (i) of this article, all generation shall be effected at cost as determined in accordance with article 12 hereof.

ASSUMPTION OF OPERATION OF POWER PLANT

(11) (a) Energy shall be ready for delivery to the city and to the municipalities, including those contracting under the last paragraph of article 14, when the Secretary announces that 1,250,000,000 kilowatt-hours of energy per year is ready for delivery.

(b) Energy shall be ready for delivery to the district when the Secretary announces that 2,000,000,000 kilowatt-hours of energy per year is available, which date, however, shall not be sooner than one year after energy is ready for delivery to the city; provided, however, that the time when energy is ready for delivery to the district may be advanced, subject to the approval of the Secretary, should the district so request, and that in such case the city shall be compensated by the district for interest and depreciation on and maintenance and operation of its main transmission line in case the total energy available to the city is reduced below 1,250,000,000 kilowatt-hours per annum, in the proportion that such kilowatt-hours available to the city is less than 1,250,000,000.

(c) Energy shall be ready for delivery to the company when the Secretary announces that water capable of generating 4,240,000,000 kilowatt-hours of energy per year is available, which date, however, shall not be sooner than three years after commencement of delivery of energy to the city and which shall not be until the water surface in Boulder Canyon reservoir on August 1 immediately preceding has reached an elevation of 1,150 feet above sea level (U. S. Geological Survey datum); provided, however, that the Secretary may require the company to assume its obligations to take and/or pay for Boulder Canyon energy in accordance with the provisions of this contract on the first day of the calendar month next following the date when the company's system maximum demand in kilowatts is equal to or greater than it was at any time during the 12-month period immediately preceding the date when the city commences to obtain energy from Boulder Canyon power plant. "Maximum demand," as used in the sentence next preceding, shall be defined as the average of the five largest half-hourly peaks during any single month, after deducting therefrom the amount of kilowatts the company may be temporarily carrying for any purpose other than supplying its own normal load.

(d) Upon written notification from the Secretary that generating equipment is ready for operation by it as provided in subparagraphs (a), (b), and (c), respectively, of this article, and water is available for generating energy therefrom, each lessee shall assume the operation and maintenance of its respective portion of the power plant, and thereafter such lessee, severally, shall save the United States, its officers, agents, and employees harmless as to injury and damage to persons and property which may in any manner arise out of the operation and maintenance of the portion of such plant leased to it.

OPERATION AND MAINTENANCE OF POWER PLANT

(12) The respective portions of the power plant and appurtenant structures shall be operated and maintained by the city and the company, severally, under the supervision of a director appointed by the Secretary. The city and the company shall each be responsible for the operation and maintenance of that part of the power plant operated by it and shall bear the cost thereof as provided in article 16. The United States, in accordance with article 10 hereof, will pay each lessee in the form of credits upon the account of such lessee for amounts due the United States under this contract, the cost incurred by it in generating energy for other allottees for whom it is the designated generating agency, and will require such other allottees to repay such cost to the United States. Except as provided in article 10–d–i hereof as to offpeak power, the term "cost," as used with reference to generating energy for other allottees, shall include a proper proportionate allowance for amortization of the amounts for which the respective lessees are obligated to the United States on account of use of machinery and equipment as provided in paragraph (a) of article 9 hereof and interest on the respective lessees' prepayments thereof; a proper proportionate part of any annuity set up in accordance with regulations of the Secretary provided for in subdivision 3 of article 16 hereof, and any additional expenditures made by the respective lessees with the approval of the Secretary, for the purpose of meeting the obligation of the lessees to make replacements; and a proper proportionate part of the actual outlay of the lessees for operating such machinery and equipment and keeping the same in repair, including reasonable overhead charges. The extent of the allowance for the several items and the system of accounting therefor shall be prescribed by the Secretary under uniform regulations to be promulgated by him in accordance with the Boulder Canyon project act. The United States will compensate each lessee for the generation by it of any secondary energy not taken by the district or the lessees but disposed of by the United States, such compensation to cover the pro rata cost thereof as defined in this article (in proportion to the total kilowatt-hours generated in that month by each lessee), during the time said secondary energy was generated. Such secondary energy will be disposed of by the United States subject only to the prior right thereto of the district and/or the lessees.

The director, among other powers, shall have authority to enforce rules and regulations promulgated by the Secretary in accordance with the Boulder Canyon project act respecting operation and maintenance of the power plant and appurtenant works and structures pursuant to article 33 hereof.

Prior to the promulgation of any regulations or the change or modification of regulations the Secretary shall give any lessee and any allottee affected thereby an opportunity to be heard.

KEEPING LEASED PROPERTY IN REPAIR

(13) Except in case of emergency no substantial change in any leased property shall be made by either lessee without first having had and obtained the written consent of the director or Secretary, and the Secretary's opinion as to whether any change in any leased property is or is not substantial shall be conclusive and binding upon the parties hereto.

The lessees, severally, shall promptly make any and all repairs to and replacements of leased property (except those occasioned by act of God) in the control of each, respectively, which, in the opinion of the Secretary, are deemed necessary for the proper operation and maintenance of leased property. In case of neglect or failure of either lessee to make such repairs, the United States may, at its option, cause such repairs to be made and charge the actual cost thereof, plus 15 per cent to cover overhead and general expense, to the lessee having control of such property which amount, together with interest at the rate of 4 per cent per annum from the date of the expenditure to the date of payment will be paid to the United States by the lessee responsible for such repairs. The cost to the United States, with overhead and interest as stated above, of making any of the repairs contemplated by this contract, shall be repaid by the lessee having control of the property so repaired, on June 1 immediately succeeding the date of completion of such repairs.

ALLOCATION OF ENERGY

(14) The Secretary reserves and as against the lessees may exercise the power in accordance with the provisions of this contract to contract with the other allottees named in this article for the furnishing of energy to such allottees at transmission voltage in accordance with the allocation to each such allottee and the Secretary is authorized by each lessee to enforce as against it the rights acquired by such other allottees under such contracts. Each lessee severally in accordance with the agency designations made in paragraph (d) of article 10, covenants to generate and furnish energy, at transmission voltage, needed to meet the following requirements of the allottees (other than lessees), named below, the allocations of firm energy being made in percentages of the total firm energy as defined in article 15 hereof, to be delivered to such allottees at said Boulder Dam power plant.

Of firm energy

(A) To the State of Nevada, for use in Nevada not exceeding 18 per cent of said total firm energy.

(B) To the State of Arizona, for use in Arizona not exceeding 18 per cent of said total firm energy.

Should either of the States not take its full 18 per cent allocation within a period of 20 years hereof, the other may then contract for the energy not so taken up to 4 per cent of the total firm energy, provided that the combined amount used by the two States shall not, at any time, exceed 36 per cent of such total firm energy.

(C) To the Metropolitan Water District of Southern California so much energy as may be needed and used for pumping Colorado River water into and in its aqueduct for the use of such district within the following limits:

(1) Not exceeding 36 per cent of said total firm energy, plus

(2) All secondary energy developed at the Boulder Dam power plant as provided in article 17 hereof; plus

(3) So much of the firm energy allocated to the States, the city, and the company as may not be in use by them. Energy allocated to the States but not in use by them, shall be released to the district by the two lessees equally (unless they agree upon a different ratio) as follows:

(a) If the district makes a firm contract with the Secretary for the balance of the lease period for part or all of such unused States energy (subject to the first right of the States thereto) such contract shall be made effective upon two years' written notice to the Secretary, and compensation to the lessees, respectively, for main transmission line property rendered idle;

(b) If the district does not so make a firm contract for such energy, then energy allocated to the States but not in use by them, shall be released to the district upon not less than 15 months' written notice to the Secretary and at such compensation as the district and such lessees, respectively, may agree upon, to cover cost and overhead of replacing energy which otherwise would have been received at the Pacific coast end of the main transmission lines by the lessees, respectively. Such cost shall include interest on and depreciation and operation and maintenance of the plant capacity while required for the generation of such substitute energy; and also appropriate allowance for interest on and maintenance and depreciation of plant capacity rendered idle because of cessation of generation of such substitute energy until such time as such plant capacity would otherwise have been installed by the lessees, respectively, for their own requirements. If the district and the respective lessees fail to agree on such compensation, such energy shall nevertheless be released to the district, and the disagreement shall be determined in accordance with article 35 (a) hereof. Such determination shall include allowance for items of cost, and overhead as specified in this paragraph. Pending such determination, energy so released shall be paid for by the district at the rate for firm energy but the determination of compensation under article 35 (a) hereof shall not be controlled by such rate.

During any year beginning June 1, the district shall not use any secondary energy nor any unused State energy, until it has first used subsequent to June 1, next preceding, an amount of firm energy equivalent to one-twelfth of the amount of firm energy it is obligated to take and/or pay for annually multiplied by the number of months elapsed since June 1 next preceding.

(4) If, due to temporary deficiency in secondary energy regularly used by the district, substitute energy is requested by the district in excess of the energy made available under the foregoing subparagraph (3) (b) the city and/or the company may release so much energy as may be practicable on the same terms as provided in subsection (3) (b) preceding.

(D) To the municipalities of Anaheim, Beverly Hills, Burbank, Colton, Fullerton, Glendale, Newport Beach, Pasadena, Riverside, San Bernardino, and Santa Ana (referred to herein as "the municipalities"), 6 per cent in all, to be allocated between them as they may agree; but if no agreement is submitted to the Secretary on or before April 15, 1931, the Secretary shall determine the allocation of each.

(E) To the city of Los Angeles, 13 per cent.

(F) To Southern California Edison Co. (Ltd.), the Southern Sierras Power Co., the San Diego Consolidated Gas & Electric Co., and the Los Angeles Gas & Electric Corporation, referred to herein as the companies, 9 per cent in all, division whereof between the companies shall be made according to mutual agreement among them, if possible. If no such agreement is submitted to the Secretary on or before April 15, 1931, the Secretary shall determine the allocation of each.

The foregoing allocations are subject to the following conditions:

(i) So much of the energy allocated to the States (36 per cent of the firm energy) and not in use by them, or failing their use, by the district for the above purposes, shall be taken and paid for one-half by the city and one-half by the company.

(ii) All of the energy allocated to the municipalities may be contracted for in compliance with regulations of the Secretary, by any one or more of them, as they may agree, on or before April 15, 1931. So much of the energy allocated to the municipalities as is not so contracted for, or if contracted for, not used by them directly or under contract for municipal purposes and/or distribution to their inhabitants shall be taken and paid for by the city.

(iii) So much of the energy allocated to the Southern Sierras Power Co., the San Diego Consolidated Gas & Electric Co., and the Los Angeles Gas & Electric Corporation as is not firmly contracted for by them, severally, in compliance with regulations of the Secretary on or before April 15, 1931, shall be taken and paid for by the company.

(iv) If any allottee is permitted by the United States to divert water from the reservoir at a time when the reservoir is not spilling, in consequence of which the amount of energy which would have been utilized is diminished, such diminution shall be debited to the allocation of firm energy herein made to such allottee, and charge for the energy equivalent of such diversion shall be made, and the amount of energy which the allottee shall otherwise be obligated to take and pay for hereunder shall be correspondingly reduced.

The reservoir shall be considered as spilling whenever water is being discharged in excess of the amount used for the generation of power, whether such waste occurs over the spillway or otherwise.

(v) Each of the States of Arizona and Nevada may, from time to time within the period of this lease, contract for energy for use within such State in any amount until the total allocated respectively to each is in use as provided above; and may terminate such contract, or contracts, without prejudice to the right to again contract for such energy. All such contracts shall be executed with the Secretary. A contract requiring 1,000 horsepower (of maximum demand) or less may become effective or be terminated on 6 months' written notice of requirement or termination given the director by the State; provided, that the notice given shall be 2 years if in the 12 months preceding said notice of demand the total increment to such State has exceeded 5,000 horsepower of maximum demand, or if in the 12 months preceding said notice of termination the decrement to such State has exceeded 5,000 horsepower of maximum demand. In all cases the director shall immediately transmit such notice to each lessee. Whenever the amount in use is in excess of 5,000 horsepower of maximum demand, the lessees respectively shall be compensated for property rendered idle by use of such excess in such amount as the Secretary shall determine to be equitable. Firm energy not contracted for by the States shall be available for use by the district as herein elsewhere provided, and if not in use by the States and/or the district, shall be taken and paid for equally by the two lessees. No right which may be available to a State under section 5 (c) of the Boulder Canyon project act, to execute a firm contract for electrical energy for use within the State shall be impaired by any provision of this lease; but if contract thereunder be executed with the Secretary no provision of this lease shall apply for the benefit of such State. If in consequence of execution of such contract the Secretary requires the allocation to either lessee or to an allottee using such lessee's main transmission lines to be diminished, such lessee may ter-

minate its rights and obligations hereunder within two months thereafter on written notice to the Secretary; provided further, that the combined allocation of 19 per cent as herein made to the city and the municipalities shall not be reduced because of any such firm contract with a State for energy.

Of secondary energy

The district shall have the right to purchase and use all secondary energy as provided in article 15 and article 17 hereof for the purposes stated in the first paragraph of subdivision (c) of this article. The city and the company shall each have the right to purchase and use one-half of all secondary energy not used by the district. Any such energy not used by one lessee shall be available, for the time being, to the other. If secondary energy is not taken by the city, the district, and/or the company, then and in such event, the United States reserves the right to take, use, and dispose of such energy, from time to time, as it sees fit, giving credit therefor as provided in article 12 hereof.

Of firm energy allocated to but not used by the district

In the event the district shall fail for any reason to use all or any of the firm energy herein allotted to it for the only purpose for which said firm energy is allotted to it—that is, for pumping water into and in its aqueduct—then no disposition shall be made of such firm energy by the Secretary without first giving to a successor to the district which may undertake to build or maintain a Colorado River aqueduct the opportunity to take said firm energy for the same purpose and under the same terms as those to which the district was obligated.

In the event no such successor takes said firm energy as provided above, then no disposition of such firm energy shall be made by the Secretary without first giving to each lessee the opportunity to contract on equal terms and conditions, to be prescribed by the Secretary, for one-half of such energy, together with such portion of the remainder as the other lessee shall not elect to take.

Of firm energy not disposed of under the foregoing allocations

The United States reserves the right, in case the dam which it erects provides a maximum water surface elevation in excess of 1,222 feet above sea level (U. S. Geological Survey datum), and thereby increases the quantity of firm energy above the quantity of 4,240,000,000 kilowatt-hours allocated above, to dispose of such increase, but not to exceed 90,000,000 kilowatt-hours per year (June 1 to May 31, inclusive) to any municipality or municipalities by firm contract executed with the Secretary on or before April 15, 1931. Such disposition shall be without prejudice to any provision of this lease or of the allocation above referred to. So much of such additional energy as is not so contracted for shall be taken and paid for by the city. Generation of such additional energy shall in any event be effected by the city.

FIRM AND SECONDARY ENERGY DEFINED

(15) The amount of firm energy for the first year of operation (June 1 to May 31, inclusive) following the date of the completion of the dam as announced by the Secretary shall be defined as being 4,240,000,000 kilowatt-hours at transmission voltage. For every subsequent year the amount defined as firm energy shall be decreased by 8,760,000 kilowatt-hours from that of the previous year.

Nevertheless, if it be determined by the Secretary that the rate of decrease of kilowatt-hours per year as above stated is not in accord with actual conditions, the Secretary reserves the right to fix a lesser rate for any year (June 1 to May 31, inclusive) in advance.

If by reason of international obligations arising through treaty or otherwise subsequent to the effective date of this contract, or by reason of interference with the program of construction and/or operation of the dam as provided for and contemplated by this contract, or by reason of other contingencies not now foreseen, the amount of firm energy available through the release of water from the Boulder Canyon Reservoir shall in fact be less than the amount of firm energy as above defined, then in any such event the obligation of the lessee to take and/or generate shall be reduced in an amount corresponding to such change. If for any reason the United States shall be wholly unable to fulfill its obligations hereunder in respect to the delivery of water, then the lessees, or either of them, may terminate this contract in so far as it affects such lessees or lessee.

If the dam erected by the United States provides a maximum water surface elevation in excess of 1,222 feet above sea level (U. S. Geological Survey datum), the United States reserves the right to dispose of additional firm energy thereby made available, not to exceed 90,000,000 kilowatt-hours per year, subject to pro rata of the 8,760,000 kilowatt-hours annual diminution above provided for.

The term "secondary energy" wherever used herein shall mean all electrical energy generated in one year (June 1 to May 31, inclusive) in excess of the amount of firm energy as hereinabove defined, available in such year.

The right of the district and/or lessee to take and pay for energy at the rate for secondary energy after discharge of such party's obligation to the United States to pay for energy at the rate for firm energy, shall not be impaired by reason of the fact that another allottee has not discharged its obligation to pay for energy at the rate for firm energy.

SCHEDULE OF RATES

(16) In consideration of this lease, the lessees severally agree:

(1) To pay the United States for the use of falling water for the generation of energy for their own use, respectively, by the equipment leased hereunder (except as otherwise provided in article 17 hereof), as follows:

(a) One and sixty-three one-hundredths mills per kilowatt-hour (delivered at transmission voltage) for firm energy;

(b) One-half mill per kilowatt-hour (delivered at transmission voltage) for secondary energy;

(2) To compensate the United States for the use of the said leased equipment as herein elsewhere provided; and

(3) To maintain said equipment in first-class operating condition, including repairs to and replacements of machinery; provided, however, that if the expenditures for replacement shall exceed at any time the sum accumulated by the lessees as a depreciation reserve in accordance with rules and regulations prescribed by the Secretary, pursuant to the Boulder Canyon project act, less all amounts previously withdrawn for replacements, then the rates aforesaid shall be readjusted as hereinafter provided so as to reimburse the said lessees severally for such excess expenditures within the term of this lease.

At the end of 15 years from the date of execution of this contract and every 10 years thereafter, the above rates of payment for firm and secondary energy shall be readjusted upon demand of any party hereto, either upward or downward as to price, as the Secretary may find to be justified by competitive conditions at distributing points or competitive centers.

The rate for falling water for generation of firm energy which shall be uniform for both lessees provided for by any such readjustment shall be arrived at by deducting from the price of electrical energy justified by competitive conditions at distributing points or competitive centers, (1) all fixed and operating costs as provided for in this contract of transmission to such points; (2) all fixed and operating costs of such portion of the power plant machinery as is to be operated and maintained by the several lessees, including the cost of repairs and replacements, together with such readjustment as to replacements as is provided for in paragraph 3 in this article; it being understood that such readjusted rates shall under no circumstances exceed the value of said energy, based upon competitive conditions at distributing points or competitive centers.

In arriving at the respective rates for "firm energy" and "secondary energy," as fixed herein, recognition has been given to the fact that "secondary energy" can not be relied upon as being at all times available, but is subject to diminution or temporary exhaustion; whereas "firm energy" is the amount of energy agreed upon as being available continuously as required during each year of the contract period. In the readjustment of the rate for "secondary energy," account shall be taken of the foregoing factors.

If the lessees severally or either of them shall not obtain a renewal of this contract at the expiration of the contract period, as provided in article 26 hereof, equitable adjustment for major replacements of machinery made between the date of the last readjustment of rates, as provided for herein, and the end of the contract period shall be made at the expiration of the contract.

MINIMUM ANNUAL PAYMENT

(17) The total payments made by each lessee for firm energy available in any year—June 1 to May 31, inclusive—whether any energy is generated or not, exclusive of its payments for use of machinery, shall be not less than the number of kilowatt-hours of firm energy available to said lessee and which said lessee is obligated to take and/or pay for during said year, multiplied by $0.00163, or multiplied by the adjusted rate of payment for firm energy in case the said rate is adjusted, as provided in article 16 hereof, less credits on account of charges to other allottees, as provided for and referred to in article 12 hereof. For a fractional year at the beginning or end of the contract period, the minimum annual payment for firm energy shall be proportionately adjusted in the ratio that the number of days water is available for generation of energy in such fractional year bears to 365; provided, however, that in order to afford a reasonable time for the respective lessees to absorb the energy contracted for, the minimum annual payments by each for the first three years after energy is ready for delivery to such lessees, respectively, as announced by the Secretary, shall be as follows, in percentages of the ultimate annual obligation, to take and/or pay for the firm energy:

	Per cent
First year	55
Second year	70
Third year	85
Fourth year and all subsequent years	100

During said absorption period, if the quantity of energy taken in any one year—June 1 to May 31, inclusive—is in excess of the above percentages of the ultimate obligation during such year to take and/or pay for firm energy, such excess shall be paid for at the rate for secondary

energy; provided further, that the minimum annual payment shall be reduced in case of interruptions or curtailment of delivery of water, as provided in article 21 hereof.

MONTHLY PAYMENTS AND PENALTIES

(18) The lessees, severally, shall pay monthly for energy in accordance with the rates established or provided for herein. When energy taken in any month is not in excess of one-twelfth of the minimum annual obligation, bill for such month shall be computed at the rate for firm energy in effect when such energy was taken on the basis of the actual amount of energy used during such month. All energy used during any month in excess of one-twelfth of the minimum annual obligation shall be paid for at the rate for secondary energy in effect when such energy was taken; provided, however, that the secondary rate shall not apply to any energy taken during any month unless and until an amount of energy equivalent to one-twelfth of the minimum annual obligation has been taken for all months beginning with the month of June immediately preceding; provided, however, that the bill for the month of May shall not be less than the difference between the minimum annual payment, as provided in article 17 hereof, and the sum of the amounts charged for firm energy during the preceding 11 months. The United States will submit bills to the lessees by the 5th of each month immediately following the month during which the energy is generated, and payments shall be due on the first day of the month immediately succeeding. If such charges (less credit allowances due lessees) are not paid when due, a penalty of 1 per cent of the amount unpaid shall be added thereto, and thereafter an additional penalty of 1 per cent of the amount unpaid shall be added on the 1st day of each calendar month thereafter during such delinquency.

NO ENERGY TO BE DELIVERED WITHOUT PAYMENT

(19) After notice by the Secretary to the lessees no electrical energy shall be generated for, or delivered to, any lessee who shall be in arrears for more than 12 months in the payment of any charge and/or penalty due or to become due the United States hereunder. Each lessee shall, upon receipt of written notice from the Secretary that any allottee is in arrears in the payment of any such charge and/or penalty immediately discontinue the generation for or delivery of energy to such allottee until receipt of further notice from said Secretary.

CONTRACT MAY BE TERMINATED IN CASE OF BREACH

(20) In case of the breach by a lessee of the terms and conditions of this agreement to the extent that another allottee is deprived of all or any part of the electrical energy to which it is entitled under the allocation set forth in article 14 hereof, the generation of which is to be effected by such lessee, or in case either lessee shall be in arrears for more than 12 months in the payment of any charge and/or penalty due or to become due the United States hereunder, the Secretary reserves the right to immediately enter, take possession of, and operate and maintain at the cost of such lessee, with proper deduction for charges as provided in this contract, due from the party or parties to whom such energy is delivered, so much property leased to such lessee, as may be necessary to deliver energy to such allottee, and thereafter upon two years' written notice to such lessee, to terminate this contract as to such lessee; and upon such termination hereof all leased property shall be returned and delivered up to the United States in as good condition as when received, reasonable wear and damage by the elements excepted, provided, however, that in event of such termination, a lessee shall have the right at any time within 10 years from date of first default or breach for which such termination is demanded to become reinstated hereunder by removing all causes which resulted in termination hereof including payment of penalties, if any, and payment to the United States also of any and all loss incurred by it by reason of such termination. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provision hereof, or of a subsequent breach of such provision.

INTERRUPTIONS IN DELIVERY OF WATER

(21) The United States will deliver water continuously to each lessee in the quantity, in the manner, and at the times necessary for the generation of the energy which each of said lessees has the right and/or obligation to generate under this contract in accordance with the load requirements of each of said lessees and of allottees for which the respective lessees are generating agencies, excepting only that such delivery shall be regulated so as not to interfere with the necessary use of said Boulder Canyon Dam and Reservoir for river regulation, improvement of navigation, flood control, irrigation, or domestic uses, and the satisfaction of present perfected rights in or to the waters of the Colorado River, or its tributaries, in pursuance of article 8 of the Colorado River compact, and this contract is made upon the express condition, and with the express covenant, that the several rights of the lessees to the waters of the Colorado River, or its tributaries, are subject to, and controlled by, the Colorado River compact. The United States reserves the right temporarily to discontinue or reduce the delivery of water for the generation of energy at any time for the purposes of maintenance, repairs, and/or replacements, or installation of equipment, and for investigations and inspections necessary thereto; provided, however, that the United States shall, except in case of emergency, give to the lessees reasonable notice in advance of such temporary discontinuance or reduction, and that the United States shall make such inspections and perform such maintenance and repair work after consultation with the lessees at such times and in such manner as will cause the least inconvenience to the lessees, and shall prosecute such work with diligence, and, without unnecessary delay, will resume delivery of water so discontinued or reduced. Should the delivery of water be discontinued or reduced below the amount required, severally, for the normal generation of firm energy for the payment of which said lessee has hereby obligated itself, the total number of hours of such discontinuance or reduction in any year shall be determined by taking the sum of the number of hours during which the delivery of water is totally discontinued, and the product of the number of hours during which the delivery of water is partially reduced and the percentage of said partial reduction below the actual quantity of water required by the lessees, severally, for the normal generation of firm energy. Total or partial reductions in delivery of water which do not reduce the power output below the amount required at the time by such lessee for the normal generation of firm energy will not be considered in determining the total hours of discontinuance in any year. The minimum annual payment specified in article 17 hereof shall be reduced by the ratio that the total number of hours of such discontinuance bears to 8,760. In no event shall any liability accrue against the United States, its officers, agents, and/or employees, for any damage, direct or indirect, arising on account of drought, hostile diversion, act of God, or of the public enemy, or other similar cause; nevertheless interruptions in delivery of water occasioned by such causes shall be governed as hereinabove provided in this article.

MEASUREMENT OF ENERGY

(22) All energy shall be measured at generator voltage, and suitable metering equipment shall be provided and installed by the United States for this purpose. Suitable correction shall be made in the amounts of energy as measured at generator voltage to cover step-up transformer losses and energy required for operation of station auxiliaries in determining the amounts of energy delivered at transmission voltage, as provided in this contract. The said meter equipment shall be maintained by and at the expense of the respective lessees. Meters shall be tested at any reasonable time upon the request of either the United States or a lessee, and in any event they shall be tested at least once each year. If the test discloses that the error of any meter exceeds 1 per cent, such meter shall be adjusted so that the error does not exceed one-half of 1 per cent. Meter equipment shall be tested by means of suitable testing equipment, which will be provided by the United States and which shall be calibrated by the United States Bureau of Standards as often as requested by any party hereto. Meters shall be kept sealed, and the seals shall be broken only in the presence of representatives of both the United States and the lessees, respectively, and likewise all test of meter equipment shall be conducted only when representatives of both the United States and the respective lessees are present.

RECORD OF ELECTRICAL ENERGY GENERATED

(23) Each lessee shall make full and complete written monthly reports as directed by the Secretary, on forms to be supplied by the United States, of all electrical energy generated by it and the disposition thereof to allottees. Such reports shall be made and delivered to the director on the third day of the month immediately succeeding the month in which the electrical energy is generated, and the records and data from which such reports are made shall be accessible to the United States on demand of the Secretary.

INSPECTION BY THE UNITED STATES

(24) The Secretary or his representatives shall at all times have the right of ingress to and egress from all works of the lessees for the purpose of inspection, repairs, and maintenance of works of the United States, and for all other proper purposes. The Secretary or his representatives shall also have free access at all reasonable times to the books and records of the lessees relating to the generation, transmission, and disposal of electrical energy hereunder, with the right at any time during office hours to make copies of or from the same.

TRANSMISSION

(25) (a) The city shall operate and maintain at cost, including allowance for necessary overhead expense, the lines required for transmitting all Boulder Canyon power from the power plant to the pumping plants of the district, allocated to and used by the district for pumping water into and in its aqueduct: Provided, That in the event it should prove materially to the advantage of the district, at any time during the 50-year period of this several lease, the district may operate and maintain such transmission lines itself: And provided further, That in the event of disagreement or dispute between the district and the city as to such matter, such disagreement shall be determined as provided in article 35 (a) hereof; and if by such determination energy allocated to and used by the district is to be transmitted by the district instead of the city, the Secretary will cause delivery of energy at transmission voltage to be made accordingly.

(b) The city of Los Angeles shall transmit over its main transmission line constructed for carrying Boulder Canyon power all such power

allocated to and used by each of the municipalities severally and be compensated therefor on the basis of a reasonable share of the cost of construction, operation, and maintenance of such line, subject to the understanding that if on further investigation before April 15, 1932, it shall prove to be materially more economical for any municipality to make a different arrangement respecting transmission of its power, it may do so, provided that the arrangement so made shall not reduce the quantity of energy transmitted by the city below 19 per cent of the firm energy generated, and subject to the further understanding that in case of any disagreement over the question of cost of transmission of Boulder Canyon power, such disagreement shall be determined in accordance with article 35 (a) hereof.

(c) The company shall transmit over its main transmission lines, constructed for carrying Boulder Canyon power, such power allocated to and used by the Southern Sierras Power Co., the San Diego Consolidated Gas & Electric Co., and the Los Angeles Gas & Electric Corporation as they may desire to have transmitted over such lines, and the company shall be compensated therefor as may be mutually agreed upon between the company and the agency whose power is transmitted over the company's lines. In case of any disagreement over the question of cost of transmission of Boulder Canyon power, such disagreement shall be determined in accordance with article 35 (a) hereof.

DURATION OF CONTRACT

(26) This contract shall become effective as soon as the first act of Congress appropriating funds for commencement of construction of Boulder Canyon Dam has become law, and as to each lessee shall remain in effect until the expiration of a period of 50 years from the date at which energy is ready for delivery to the city, as announced by the Secretary. The holder of any contract for electrical energy, including the lessees severally, not in default thereunder, shall be entitled to a renewal thereof upon such terms and conditions as may be authorized or required under the then existing laws and regulations, unless the property of such holder dependent for its usefulness on a continuation of the contract be purchased or acquired and such contractor be compensated for damages to its property used and useful in the transmission and distribution of such electrical energy and not taken resulting from the termination of the supply.

TITLE TO REMAIN IN UNITED STATES

(27) As provided by section 6 of the Boulder Canyon project act, the title to Boulder Canyon Dam, reservoir, plant, and incidental works shall forever remain in the United States.

ELECTRICAL ENERGY RESERVED FOR UNITED STATES

(28) Each lessee by means of machinery leased hereunder shall furnish to the United States such electrical energy as may be desired at a maximum demand not to exceed 5,000 kilowatts for construction and/or operation and maintenance purposes, and for diversion of water for irrigation and domestic uses, but not for resale to other than officers and employees and construction contractors of the United States, and to other persons in construction or operating camps constructed and/or maintained by the United States. Such power shall be delivered to the United States at the power plant, and shall be measured at the point of delivery by meters furnished and installed by the United States. The United States will pay each lessee for such power, through credit on monthly bills, at cost as provided in article 12 hereof.

USE OF PUBLIC AND RESERVED LANDS OF THE UNITED STATES

(29) The use is authorized of such public and reserved lands of the United States as may be necessary or convenient for the construction, operation, and maintenance of main transmission lines, to transmit electrical energy generated at Boulder Canyon Dam, together with the use of such public and reserved lands of the United States as may be designated by the Secretary, from time to time, for camp sites, residences for employees, warehouses, and other uses incident to the operation and maintenance of the power plant and incidental works.

PRIORITY OF CLAIMS OF THE UNITED STATES

(30) Claims of the United States arising out of this contract shall have priority over all others, secured or unsecured.

OTHER CONTRACTS

(31) Execution of this contract by the city and performance of its obligations and assumptions of its rights hereunder shall not be deemed in violation of any provision of any contract between the city and company heretofore executed.

TRANSFER OF INTEREST IN CONTRACT

(32) No voluntary transfer of this contract or of the rights hereunder shall be made without the written approval of the Secretary, and any successor or assign of the rights of either lessee, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all the conditions of the Boulder Canyon project act and also subject to all the provisions and conditions of this contract to the same extent as though such successor or assign were the original lessee hereunder; provided that a mortgage or trust deed or judicial sales made thereunder shall not be deemed voluntary transfers within the meaning of this article.

RULES AND REGULATIONS

(33) This contract is subject to such rules and regulations conforming to the Boulder Canyon project act as the Secretary may from time to time promulgate; provided, however, that no right of either lessee hereunder shall be impaired or obligation of either lessee hereunder shall be extended thereby; and provided further that opportunity for hearing shall be afforded each lessee by the Secretary prior to promulgation thereof.

AGREEMENT SUBJECT TO COLORADO RIVER COMPACT

(34) This contract is made upon the express condition and with the express understanding that all rights hereunder shall be subject to and controlled by the Colorado River compact, being the compact or agreement signed at Santa Fe, N. Mex., November 24, 1922, pursuant to act of Congress approved August 19, 1921, entitled "An act to permit a compact or agreement between the States of Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming respecting the disposition and apportionment of the waters of the Colorado River, and for other purposes," which compact was approved in section 13 (a) of the Boulder Canyon project act.

DISPUTES AND DISAGREEMENTS

(35) (a) Disputes or disagreements arising under this contract between the lessees or between a lessee and another allottee shall be arbitrated by three arbitrators, but only in case where it is not provided herein that the determination shall be made by the Secretary. Each disputant shall name one arbitrator and these two shall name the third. If either disputant has notified the other that arbitration is demanded and that it has named an arbitrator, and if thereafter the other disputant fails to name an arbitrator for 15 days, the Secretary, if requested by either disputant, shall name such arbitrator, who shall proceed as though named by the disputant. The two arbitrators so named shall meet within five days after appointment of the second and name the third. If they fail to do so, the Secretary will, on request by either disputant or arbitrator, name the third. A decision by any two of the three arbitrators shall be binding on the disputants and enforceable by court proceedings or by the Secretary in his discretion. Arbitration as herein provided, or the failure of the arbitrators to render a decision within six months of appointment of the third arbitrator, shall be a condition precedent to suit by either disputant against the other upon the matter in dispute.

(b) Disputes or disagreements between the United States and a lessee or lessees as to the interpretation or performance of the provisions of this contract shall be determined either by arbitration or court proceedings, the Secretary of the Interior being authorized to act for the United States in such proceedings. Whenever a controversy arises out of this contract and the disputants agree to submit the matter to arbitration, the lessees, if the matter in dispute affects the rights of both lessees or if the matter in dispute affects the rights of only one lessee, then such lessee shall name one arbitrator and the Secretary shall name one arbitrator, and the two arbitrators thus chosen shall elect three other arbitrators, but in the event of their failure to name all or any of the three arbitrators within five days after their first meeting, such arbitrators not so elected shall be named by the senior judge of the United States Circuit Court of Appeals for the Ninth Circuit. The decision of any three of such arbitrators shall be a valid and binding award of the arbitrators.

CONTINGENT UPON APPROPRIATIONS

(36) This contract is subject to appropriations being made by Congress from year to year of moneys sufficient to do the work provided for herein and to there being sufficient moneys available in the Colorado River Dam fund to permit allotments to be made for the performance of such work. No liability shall accrue against the United States, its officers, agents, or employees, by reason of sufficient moneys not being so appropriated nor on account of there not being sufficient moneys in the Colorado River Dam fund to permit of said allotments. This agreement is also subject to the condition that if Congress fails to appropriate moneys for the commencement of construction work within five years from and after execution hereof, or if for any other reason construction of Boulder Canyon Dam is not commenced within said time and thereafter prosecuted to completion with reasonable diligence, then and in such event any party hereto may terminate its obligations hereunder upon one year's written notice to the other parties hereto.

MODIFICATIONS

(37) Any modification, extension, or waiver by the Secretary of any of the terms, provisions, or requirements of this contract for the benefit of any one or more of the allottees (including the lessees) shall not be denied to any other.

MEMBER OF CONGRESS CLAUSE

(38) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom. Nothing, however, herein contained shall be construed to extend to this contract if made with a corporation for its general benefit.

In witness whereof the parties hereto have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA,
By ——— ———,
Secretary of the Interior.
THE CITY OF LOS ANGELES, ACTING BY AND THROUGH
ITS BOARD OF WATER AND POWER COMMISSIONERS,
By JOHN R. HAYNES, *President.*
Attest:
JAS. P. VROMAN, *Secretary.*
SOUTHERN CALIFORNIA EDISON CO. (LTD.),
By JOHN B. MILLER, *Chairman.*
Attest:
CLIFTON PETERS, *Secretary.*

RESTRICTION OF IMMIGRATION

Mr. McNARY obtained the floor.

Mr. COPELAND. Mr. President——

The VICE PRESIDENT. Does the Senator from Oregon yield to the Senator from New York?

Mr. McNARY. I yield.

Mr. COPELAND. As in legislative session, I desire to enter a motion to reconsider the motion by which the immigration bill, being Senate bill 51, was recommitted to the Committee on Immigration. Having voted to recommit the bill, I am in a position to make the motion.

The VICE PRESIDENT. The motion will be entered.

THE ADVANCE OF MONOPOLY

Mr. SHEPPARD. Mr. President, I ask unanimous consent to have printed in the RECORD an address on The Advance of Monopoly, delivered by Hon. J. H. (Cyclone) Davis at Marshall, Tex., on March 27, 1930.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

Ladies and gentlemen, I am glad to be with you, but I am not glad of the baleful condition of our country that brought me here.

For 40 years I have stood on the watchtower and warned the people of the impending calamity that now confronts us. Thirty-two years ago in a speech in Omaha, Nebr., I made the following statement:

"My text will be found in that passage where God said, 'Open thy mouth, judge righteously, and plead the cause of the poor and the needy.' All the grand opportunities that God gave to man are being put by law and usurpation into the clutches of soulless, pitiless corporations that have no soul to damn under God's laws and no neck to break under human laws, and without the love of God or the dread of hell they are robbing man of his God-given birthright. These monopolists who stand between the producer and consumer holding a franchise to operate public functions rob both producer and consumer by law. They rob labor because it has no means of self-employment. They rob the producer because they control the money that buys, the factories that manufacture, and the transportation that hauls his produce." In this way they have extorted billions from a helpless people, and are now combining to continue their spoliation by driving out all home-owned or local merchants.

I believe in democracy as a heaven-born principle of government which shields the people against oppression in every form, and gives them the broadest scope of individual action consistent with public peace, public morals, public health, and public justice. But these great chain-store gangs seem to think government is an institution to legally hold the people still while they plunder them. I am glad the governors, lawmakers, and Congress are aroused over the perilous condition that now confronts us. It is not only chain stores but all lines of business that are being merged, linked, and chained together. Seven great oil corporations, leading packers, railroads, steamships, and several leading banks were chained into a world-wide combine two weeks ago, uniting the money power of England, Holland, and Wall Street into this world-wide devilfish. Their intention is to control all lines of industry from field, factory, and source of output to the consumer. They have put Rockefeller's brother-in-law in charge of their leading bank in New York with $3,000,000,000 capital.

Now, let your mind run over a survey of the colossal power they will have. The packers will then as now control the livestock industry and control everything in a living animal and take a profit out of the finished product except the squeal of the hog, the bleat of the sheep, and the bellow of the cow. They will control the price of oil and all its by-products; control transportation inland and sea, including auto-bus lines. These railroads are chained and combined until there are now just 21 rail combinations, dominated by 5 men. And these transportation lines have a Government guaranteed net income of 6 per cent on $19,000,000,000. That makes the stupendous sum of $1,140,000,000 that flows into the pockets of the Wall Street gang every year. No wonder they can put up chain stores and monopolize all blessings of life and liberty. Under their sway the ordinary business man and country banks are doomed.

Our forefathers, led by the unseen hand of omnipotence, built the grandest structure of government the world has ever known. Shuddering at the horrible tyranny and murderous conduct of kings, crowns, popes, and princes, they founded a government to free themselves and their posterity from the brutality of such crowned freebooters. Our Declaration of Independence was the morning star of a new day to mankind. Our Constitution hung a rainbow of promise in front of the liberty-loving people of every land. When our patriotic fathers proclaimed the divine truth that the God who gives life gives liberty at the same time; that all mankind are created with equal rights; that all political power is inherent in the people and all just powers of government are derived from their consent, they repudiated the whole theory of crowned aristocracy and gave a gospel of freedom to humanity. But we have thrown the grand pattern of government our forefathers made into the junk pile and created a lot of huge corporations that rob us with more heartless greed than kings did.

Each of these great combines named herein violates every law for which our forefathers rebelled against King George. And they extort from us more money each year than King George could have taken in a lifetime.

We have been victimized, bound down by ages of oppression and plunder and have never been allowed to develop the good or the sublime in our race. Mankind is a creature of environment; his conscience is a pupil in the school of contact, subject to the evil as well as the good influences and money is the most absorbing thought in the human race, and a just and righteous system of currency will do more to tone and elevate life than all else may do, but our present system is a relic of modified barbarism coming down from feudal times and our country is yet filled with Shylocks who demand their pound of flesh.

When the men who made our Federal Constitution had finished their work, in an address they named five supreme questions of sovereignty that had been taken from the States and vested solely in the Federal Government. These powers were: "To make war, conclude peace, form treaties, coin money, and regulate commerce." They said, "These questions and the correspondent executive and judicial authorities shall be fully and effectively vested in the General Government." We have just as much right to farm out to the corporations the power to declare war and conclude peace and to make treaties as we have to farm out the power to coin money and regulate commerce, and would be equally safe in so doing. Yet, we have vacated our sovereignty over our coinage and currency and the regulation of commerce to a pitiless horde of trusts which have centralized our wealth, making cannibals in commerce and merciless marauders in our monetary affairs; and led on by inordinate greed they are now seeking by chain monopoly to make serfs, peons, slaves out of our people. These malevolent rich, who, Roosevelt said, "Were conspiring to rob the country of its birthright, who had gathered their swollen fortunes by every means of swindling down to common theft," are treading millions down into poverty. Our people are in a midnight of discontent, our national conscience becoming numb, our morals ebbing to low tide, and we have a riot of rascality as these crime-breeding conditions go on. I believe wealth, honestly acquired, adds to the luster of life and makes a man a nobler citizen, gives him greater power to serve God and man. But millions, extorted from a helpless people, corrodes the conscience, poisons the fountains of honor, vitiates all sense of justice, and makes its possessor a tyrant. These are the kind that dominate our country.

We are living in a wonderful age. The common progress is beyond estimate. Yet it is claimed that the great corporations take 20 per cent of our output every year with which to gorge their greed and build castles for the classes and cabins for the masses. I admit that we are far in advance of our ancestors.

"But rank injustice still prevails
And fills our land with strife,
We see outrage everywhere,
In all the walks of life."

Lazarus is better off to-day because there are a thousand men like Dives with crumbs to drop and blooded dogs to lick his sores. But if we continue to charter the natural blessings of our country into the hands of special privilege and allow them by law to concentrate and combine their wealth and power, ere long there will be a few thousand men like Dives and millions of men like Lazarus; then there will not be dogs enough to go around and lick their sores and soothe their pains.

Following the Civil War when the South was vanquished and disfranchised and most of the West was a naked prairie the Northeast led by men like Thad Stevens and Simon Cameron contended that they had saved the Union and had a right to rule it. They set about to hold the South and West in thraldom for all time. They shaped all laws so as to run the wealth of the country into their tills. Sixty years of ravenous rule by their great corporations have cultivated lust and greed until our Nation is filled with malefactors of great wealth who take from society without just recompense. They have held back the hire of labor by fraud until its cries have entered into the

ears of the Lord. They have lived in pleasure and been wanton, have waded through slaughter, selfishness, and sin to a throne and have shut the gates of mercy against mankind. When age overtakes them they look back and sigh for lost opportunities, while their silver and gold cankers and rust bears witness gainst them. They then try to take out fire insurance against the flames of hell by giving charity.

EXCESSIVE COST OF COTTON BALING

Mr. RANSDELL. Mr. President, no phase of the many-sided farm problem which is now engrossing the attention of the American people is more important than the marketing of cotton. This especially applies to the package or bale in which the cotton leaves the farm.

Careful estimates by competent critics, including our own Department of Agriculture and the foremost men in the cotton trade throughout the world, have placed the annual loss to the American farmer due to bad baling at $50,000,000. That figure, if anything, underestimates rather than exceeds this loss which is all the more deplorable because it is utterly without excuse.

For many years I have had bills pending in the Senate intended to correct this evil. During the last Congress, after extended hearings at which Mr. A. W. Palmer, Chief of the Division of Cotton Marketing, Bureau of Agricultural Economics, Department of Agriculture, and other outstanding leaders in the cotton world, testified, the Senate Committee on Agriculture and Forestry made a favorable report—Senate Report 1281—on my bill —S. 872, Seventieth Congress, first session—to standardize bales of cotton and require their sale by the true net weight of their contents. This bill was reintroduced and is now pending as S. 914. That legislation, as those hearings disclosed, would automatically result in the proper baling of our leading money crop at the gin, and would be the consummation of a program I outlined at the convention of the American Cotton Association held at Montgomery, Ala., April 14, 1920, and have striven to achieve ever since.

That program has had the indorsement of the best thought in every branch of the cotton trade, but the necessity for it has never been better expressed than by Col. Henry G. Hester, the veteran secretary for more than 50 years of the New Orleans Cotton Exchange, and the leading living authority on American cotton. Speaking in a broad way on the necessity for reclaiming this great American product from the slipshod methods in which it is now marketed, he says:

> Let Congress help us to educate the rising generation, black as well as white, to rescue our highways and landings from the mud and slush, to see to it that proper protection is afforded from defective storage places of transportation companies, aid us to teach the people that a bale of cotton that is worth much more, is as much entitled to protection as a bale of hay or a sack of flour, and the demand for the destruction of economic trade methods which are a natural help to the grower will cease.

Mr. President, it is not my intention to address the Senate at length at this time. My purpose instead is to call attention to an unusually informative article upon this subject which appeared in the Manufacturers Record of Baltimore, in its issue of April 24. Accompanying that article, which points out that we are suffering an annual loss of $50,000,000 by reason of "our barbarous cotton-handling methods," is a convincing editorial in the best vein of this vigilant publication which for many years has been upon the watchtower keeping guard upon the agricultural and industrial welfare of the South.

It is to be regretted that the rules which govern the publication of the CONGRESSIONAL RECORD will prevent the reproduction of the illustration by which this great paper brings home the necessity for a change in our methods of packing and marketing cotton. The greatest service that could be rendered the cotton trade would be to send that picture to every gin and warehouse where cotton is stored so that the contrast could be seen between the old, slipshod, wasteful method of baling, and another bale packed with due regard to those ends which are sought in marketing of every other American crop except cotton. While the illustration can not be reproduced, I ask unanimous consent, Mr. President, to have printed in the RECORD the news item and the editorial.

I also ask in connection with this subject that I may be allowed to include two letters I have just received—one from Col. Harvie Jordan, managing director of the American Cotton Shipping Association, and the other from Anderson, Clayton & Co., the largest dealers in American cotton.

The VICE PRESIDENT. Without objection, it is so ordered.

The matter referred to is as follows:

BETTER COTTON BALING WOULD SAVE $50,000,000 ANNUALLY FOR SOUTHERN FARMERS

That presses for the round baling of cotton can now be bought outright by ginners instead of operating them only under a license system eliminates the one great obstacle which for years made many people fear the round-bale system might become a monopoly. It is now possible to banish the barbarous baling methods of the South's cotton, which have cost this section hundreds of millions of dollars. For generations the importance of better baling of American cotton has been urged upon the South. Edward Atkinson, the noted New England political economist of former years, dubbed the method of handling American cotton as more barbarous than that of any other product of importance known to mankind. Even India and Egypt, two cotton-raising countries whose people are among the poorest in the world, bale their cotton in a way far superior to the methods used for American cotton.

One of the mysteries of the ages has been the way in which the South has handled its cotton, loosely pressed and badly baled, badly handled at the gins, the bales badly covered, often left out in the rain and mud for weeks and sometimes for months—a disgrace to the whole cotton-handling business, a wasteful practice from beginning to end.

About a third of a century ago the round-bale system was developed, whereby the cotton was so well covered that Mr. Atkinson named it the "underwriters' bale," because it was not inflammable, the air being excluded as the cotton batting was around a cylinder. Against this system the vested interests in gins and cotton compresses brought all the power of their financial and business influence to bear, but in the third year of its active operation the company put out over 900,000 round bales, and then the movement was temporarily halted.

Steamship lines gave a lower freight rate than on the square bales, insurance was lower, and though much more cotton in weight in round bales than in square bales could be put in a freight car, the railroads refused to make any reduction in rates, doubtless due to the influence of the compress interests.

It has been claimed, and probably correctly so, that a better baling of cotton, such as that which was inaugurated by the round-bale system, would produce a saving to southern farmers of not less than $50,000,000 a year.

Perchance the Farm Board may be able, in connection with the work of the Department of Agriculture, to bring about some united, determined effort that the American cotton crop shall not be handled as barbarously as in the past and in the method of packing and shipping shall not rank so far below the cotton from all other cotton-growing countries. This situation as it stands is a serious reflection on the cotton-growing and cotton-handling interests of the country. It is a crime to continue such wasteful methods in this era of efficiency. In view of the importance of better cotton baling we are giving in this issue a brief history of the round-bale system and advantages claimed for it.

FIFTY MILLION DOLLARS ANNUALLY WASTED BY OUR BARBAROUS COTTON HANDLING METHODS IN CONTRAST WITH THE ROUND-BALE SYSTEM

The Manchester Cotton Association (Ltd.) has recently made a statement to the officials of this Government strongly protesting against the present barbarous system of handling our cotton. The secretary of that association in his protest said:

"The ink used in marking the bales runs into the cotton, *canvas* [italics ours] is torn and the entire bale appears as though handled in a haphazard manner, and has not shown improvement in spite of agitation for a neater package. The neatly packed bales received from every other cotton-growing country are in striking contrast to the American bale."

"Regardless of the present disadvantages and difficulties as to the development of the system of round bales for cotton, which I have thoroughly tested in my mill, the round bale will eventually become the dominant cotton-baling system," was a statement made to the editor of the Manufacturers Record by the then president of the New England Cotton Manufacturers Association, now known as the National Cotton Manufacturers Association, many years ago when the round-bale system was under development.

At that time the development of the round-bale system aroused extreme opposition from the vested interests owning compresses in which some of the railroads were supposed to be largely interested.

The first acquaintance of the Manufacturers Record with the round-bale invention came when Jerome Hill, one of the big cotton handlers of that day, came into the office of this paper and said: "I have just seen in Waco, Tex., a system of baling cotton which puts on the scrapheap all of my interests in cotton compresses."

After hearing Mr. Hill's views as to this invention, which was that of the round-bale system, a staff correspondent was sent to Waco to investigate and make a report. Later on when several patents on round bales had been brought out, they were combined into one company under the leadership of John E. Searles, at that time the treasurer of the American Sugar Co. and one of its earliest promoters. Mr. Searles became so thoroughly interested in the round-bale plan that he made a trip through the entire South, investigated the handling of cotton, and saw what Edward Atkinson, of Boston, had claimed to be the "most barbarously handled agricultural product in the world."

Mr. Atkinson became enthusiastic over the round bale because of its noninflammability. It was covered with heavy material, automatically

wound around the bale as it went through the cotton gin. Its density when it was turned out of the gin was greater than that of the square bale at that time. It was vigorously and aggressively fought by cotton-gin people and by owners of cotton compresses. A ginning paper in Texas, purporting to be wholly in the interest of cotton gins, waged a ceaseless war against the round-bale system on the ground that it would destroy all of the independent gins. It was supposed to be a paper published wholly in the interest of gins, but some years afterwards the editor of that paper, during that campaign, said to the Manufacturers Record that he was simply employed by a big cotton house to run the paper in a red-hot fight against the round-bale system. We believe that house is not now in active operation.

Mr. Searles, who was one of the brainiest and most far-seeing business men we have ever known, a great power in the business and financial world, determined to withdraw from all other connections and concentrate his activities upon this method of baling cotton.

So much stir was made by the introduction of the round-bale system that a bill was introduced into the Mississippi Legislature and actively advocated, though we believe it was never adopted, to the effect that the round bale was so perfect that if it were permitted to continue in operation it would create such a monopoly in cotton as to greatly injure both the planter and the ginner. This was directly contrary to the plans of the American Cotton Co., but active agitation of that kind, the opposition of compress interests through the railroads, and the financial interests resulted in the bankruptcy of the company.

In the third year of its active operation the company put up about 900,000 bales of 250 pounds each. Notwithstanding the fact that these bales were not inflammable and that in carrying them there was no danger from railroad sparks or from any burning on the platform, and that a railroad car could carry a far larger amount of cotton in round bales than in the old barbarous square bales, the railroads refused to give any lower rates on the round bales than on the square bales. European steamship lines eagerly grabbed at the opportunity of handling the round bale in preference to the square bale, and gave much lower freight rates. In handling this kind of cotton they felt safer from the danger of fire, and they could pack much more of it in the same space and, therefore, granted to the round-bale business a lower rate than southern railroads were willing to grant to it. The result was that nearly all the round bales were shipped to Europe to the great advantage of European mills over American mills.

The inside story of the fight against this improvement over the old method of baling is of thrilling interest if space should ever be available to go into full details.

A few years ago Anderson, Clayton & Co., of Houston, one of the largest cotton houses in the world, undertook to revive the system of putting up round-bale cotton. They met with the same unwillingness of railroads to give them lower freight rates than on the square bale, but they found a willingness on the part of steamship lines to give a lower rate to foreign ports and, therefore, most of the cotton which they have put up in the round bale has been sent abroad.

In view of the progress being made in the redevelopment of the round bale system and the recent vigorous complaints from England about the barbarous methods which have prevailed for a century in the compressing and packing of American cotton, it seems appropriate to touch briefly, as we have done, on the origin of the round bale and the fight that was made to suppress it.

It has long been recognized that there is no other leading agricultural product in the world that is as barbarously treated and handled as cotton. The methods which have prevailed are a disgrace to all modern business development. Covered with jute, torn in many places, often lying out in the rain and mud for weeks and sometimes for months at a time, American-baled cotton puts this country to shame in comparison with the cotton baled in every other part of the world. India and Egypt, with all their backwardness as compared with America, bale their cotton far better than we do. It has been estimated by competent authorities that the methods which now prevail for the compressing, baling, and shipping of the cotton of the South cost the farmers of that section at least $50,000,000 a year. It is difficult to exaggerate the conditions under which southern cotton is compressed and covered with inflammable bagging.

Edward Atkinson, as the president of a mutual fire-insurance company, operating largely in cotton, put the old round bale to many tests as to its inflammability, and had some small frame sheds built of pine and round bales put in them. The sheds were burned, but no material damage was done to the cotton, for the way in which these round bales were put up excluded oxygen to such an extent that even a hot fire would cause only the burning of the outside layer, and by reason of lack of oxygen the fire would die out. As a result of this test, Mr. Atkinson named the round bale the "underwriters' bale" and enthusiastically advocated its universal adoption.

As the round bale is now making some considerable progress and is being vigorously pushed by Anderson, Clayton & Co., we present a few photographs confrasting the old square bale with the round bale. One illustration, which is a fair sample of how the American cotton crop is barbarously baled, shows three regulation square bales standing alongside a round bale. It is difficult to imagine anything in greater contrast.

Concerning the view showing the ragged condition of the covering on a number of bales, Anderson, Clayton & Co. write: "This photograph was taken in the regular run of a day's business, without the bales being selected in any respect whatever. We are not at all proud of the condition of them, but nevertheless the picture presents a story that leaves nothing untold."

Another view illustrates the facility with which cotton is loaded on steamships when packed in round bales. This shows the unloading of cotton at Bremen and the good condition in which the round bales were received.

Yet another view shows how the round-bale cotton is loaded into a railroad car. Referring to the amount of cotton that can be loaded into a car, Anderson, Clayton & Co., commenting on what was then the record carload in 1926, said: "This instance prompted the idea of conducting a carloading contest, made in 1927, 1928, and 1929. The photograph under consideration shows the ultimate outcome. It stands to-day as the record car of Acco bales—which is the brand under which the round bales are now handled—and, for that matter, as far as we know, is the record carload of cotton in the United States. The 480 Acco bales in that car weighed a total of 125,818 pounds. This furnishes something indeed concrete to think about with respect to the inability to secure any recognition in railroad freight rates that is most certainly justified in equity by the saving in car miles and release of equipment for earning additional revenue."

At Memphis, Tex., one very modern gin, not owned by Anderson, Clayton & Co., represents an investment of approximately $75,000, an amount in this one gin plant greater than the capital stock of banks of many small towns. It is a far cry from the gin as it was conceived by Eli Whitney to this present-day application of the principle which he established.

Unless some better system can be devised—and none ever has been—the handling of cotton can by this method be so improved that the discredit which for ages has attended the barbarously handled cotton of the South will give way to a better system of ginning, baling, and marketing of cotton, to the enormous advantage of our whole cotton business.

At the time when the American Cotton Co. was making such a vigorous campaign to introduce the round bale the railroads which refused to give lower freight rates, though they could carry far more cotton packed in round bales than in the old square bales and run much less risk of fire, gave as a reason that if they did so they would be putting a premium on the development of this system as compared with the old method of ginning cotton and shipping it back and forth to compress points, and then to the ports or to the railroad yards, and that this would be an injustice to the old method. Surely such an argument ought not to be permitted to prevail any longer. It is a discredit not merely to the South but to the whole country that our country in the world's market should rank in packing and compressing so far below the cotton of all other countries, even of the ones which in our proud boast of advancement we think are almost uncivilized and very backward in modern improvements.

Anderson, Clayton & Co. are to be congratulated on the fact that they have recently reached the conclusion to offer the Clayton round-bale press for outright sale, this change having taken effect on April 1. During the time that the press under their ownership was in more or less of an introductory stage of development they felt, like Mr. Searles, that all purposes could be best served and the ultimate best welfare of the system would be better taken care of by keeping the whole matter of distribution of the presses under a much closer supervision and observation that had been made possible by a lease plan of operation than could have been accomplished in any other way. But as it has now become evident that the press is mechanically developed where its satisfactory operation is feasible, there is no longer the occasion that formerly existed for its being desirable that the firm should retain the title to the presses.

This will mean that the press is now practically thrown open to the public, and thus the fear of possible monopoly which formerly existed will be wiped out. However, where it is preferred by the ginner, Anderson, Clayton & Co. will continue to lease presses on the same terms and conditions as heretofore, and thus there will be no change for those who would prefer to continue operating under the lease plan. Writing on this, Anderson, Clayton & Co. say:

"It is true that we have realized all along that if the Clayton round-bale press is to accomplish its potential usefulness to the cotton industry, as we believe to exist, that its distribution should conform to the usual custom with respect to any other machinery, by outright sale to the users of it.

"These are the reasons that have prompted us to make the change in our policy of distribution, and we believe that you will recognize that there is reasonable cause to believe that the scope of its usefulness will be broadened and better purposes generally will be served thereby."

It is because we believe that the round-bale system is thus placed in a way where it can be of such enormous service to the country, saving, we think, at least $50,000,000 a year to the cotton growers and ulti-

mately making it impossible for foreign buyers to criticize the baling of American cotton as barbarous as the justified statement of the Manchester Cotton Exchange, that we are thus covering the history of this epochal change in cotton handling.

AMERICAN COTTON ASSOCIATION AND
BETTER FARMING CAMPAIGN,
Atlanta, Ga., April 26, 1930.

Hon. J. E. RANSDELL,
United States Senator, Senate Office Building, Washington, D. C.

DEAR MR. RANSDELL: If you have not seen the April 24 issue of Manufacturers Record, Baltimore, be sure to get copies for your files. It gives a very full write up of high density gin compression with photos of present methods of baling, and roundly condemns the present wasteful system. The editorial comments are on page 51 and the write-up on pages 53 to 56.

As the Record is the leading industrial magazine of the South, this publication will attract renewed attention to the needed economic reforms in baling and tare in which you have for several years been interested in securing favorable legislation. No greater service could be rendered to the cotton-growing industry than speedy reforms in our wasteful and disgraceful system of baling and tare.

With personal regards, yours very truly,

HARVIE JORDAN.

HOUSTON, TEX., *April 26, 1930.*

Hon. JOSEPH E. RANSDELL,
Senate Office Building, Washington, D. C.

DEAR SIR: We appreciate your interest in our round-bale press and are pleased to comply with the request contained in your telegram of yesterday.

The Clayton round-bale press can be installed as a part of any existing gin plant without disturbing the arrangement of the machinery or replacing the square-bale press. The round-bale press is installed in a 20 by 20 inexpensive room or building attached to and forming a part of the gin building itself.

It is hardly practical to use the press in connection with a 3-stand gin plant, since the rate of production and volume of the gin would not justify the additional investment in the press. A great many 4, 5, and 6 stand gins are equipped with round-bale machinery.

Not considering the cost of the press itself, the expense, which includes the building to house the machinery, connection to the existing lint flue, change valve to permit changing from round to square bales as the farmer may request, foundations for the machinery, labor for installing, etc., usually amounts to about $1,000. The round-bale press may be installed and operated by ordinary gin mechanics of average intelligence and does not necessarily require the services of a trained expert.

The press is being offered for sale to ginners at a price of $5,500, f. o. b. San Antonio, Tex.

In Texas, where the railroads allow a refund of 18 cents per 100 pounds for compressing cotton, the complete installation will pay for itself when about 7,000 nominal bales have been compressed into round bales.

The Scientific American for June, 1929, carried a very interesting article entitled "Wasteful Cotton-Baling Methods." Believing that the article would be of interest to you, we have asked the publishers to send a copy to your Washington address.

If there is anything further we can help you with on this subject, we will be very glad to have you command us.

Yours very truly,

ANDERSON, CLAYTON & CO.,
J. ROSS RICHARDSON.

NOMINATION OF JUDGE JOHN J. PARKER

The Senate in open executive session resumed the consideration of the nomination of John J. Parker, of North Carolina, to be an Associate Justice of the Supreme Court of the United States.

Mr. WALSH of Montana. Mr. President——

The VICE PRESIDENT. Does the Senator from Oregon yield to the Senator from Montana?

Mr. MCNARY. I yield.

Mr. WALSH of Montana. Mr. President, in the course of the remarks of the Senator from Ohio [Mr. FESS] reference was made to the somewhat substantial opposition on this side of the Chamber to the confirmation of the nomination of Judge Parker, which opposition the Senator from Ohio referred to as political in character and therefore reprehensible. If it be an offense upon the part of Democrats to look with no great favor upon a nomination submitted by a Republican President it is an offense that is not by any means peculiar to the Democratic Party.

I offer for the RECORD, Mr. President, the vote on the confirmation of Mr. Justice Brandeis, appearing at page 9032 of the CONGRESSIONAL RECORD of June 1, 1916, from which it will appear that of the 22 votes cast in opposition to Mr. Justice Brandeis all but one, namely, 21, came from the Republican side of the Chamber. The one Democrat voting against the nomination of Justice Brandeis was Senator Newlands, who took occasion to explain his vote, saying:

Mr. NEWLANDS (after the result of the vote had been announced). Regarding my vote, I should like to say that I have great admiration for Mr. Brandeis as a propagandist and publicist, but I do not regard him as a man of judicial temperament, and for that reason I voted against his confirmation.

The VICE PRESIDENT. Without objection, the vote will be printed in the RECORD.

The matter referred to is as follows:

[From page 9032 of the CONGRESSIONAL RECORD of June 1, 1916]

Vote on the question of advising and consenting to the appointment of Mr. Brandeis. Yeas and nays asked by Mr. Chilton.

Yeas—47: Messrs. Ashurst, Bankhead, Beckham, Broussard, Chamberlain, Chilton, Culberson, Fletcher, Gore, Hardwick, Hitchcock, Hollis, Hughes, Husting, James, Kern, La Follette, Lane, Lea of Tennessee, Lee of Maryland, Lewis, Myers, Norris, O'Gorman, Overman, Owen, Phelan, Pittman, Poindexter, Ransdell, Reed, Saulsbury, Shafroth, Sheppard, Shields, Simmons, Smith of Arizona, Smith of Georgia, Smith of Maryland, Smith of South Carolina, Stone, Taggart, Thomas, Thompson, Underwood, Vardaman, and Walsh.

Nays—22: Messrs. Brady, Brandegee, Clark of Wyoming, Cummins, Curtis, Dillingham, du Pont, Fall, Gallinger, Harding, Lippitt, Lodge, Nelson, Newlands, Oliver, Page, Smith of Michigan, Sterling, Sutherland, Townsend, Warren, and Works.

Not voting—27: Messrs. Borah, Bryan, Burleigh, Catron, Clapp, Clarke of Arkansas, Colt, Goff, Gronna, Johnson of Maine, Johnson of South Dakota, Jones, Kenyon, McCumber, McLean, Martin of Virginia, Martine of New Jersey, Penrose, Pomerene, Robinson, Sherman, Smoot, Swanson, Tillman, Wadsworth, Weeks, and Williams.

Announcing the vote, the Vice President stated that the resolution of confirmation had been agreed to, and announced that the nomination had been confirmed.

Mr. FALL. I have a general pair with the Senator from New Jersey [Mr. Martine]. I transfer my pair to the Senator from Utah [Mr. SMOOT], and vote "nay." If the Senator from New Jersey [Mr. Martine] were present and not paired, he would vote "yea."

Mr. HOLLIS. I have a pair with the junior Senator from New York [Mr. Wadsworth]. I transfer that pair to the Senator from Maine [Mr. Johnson]. If the Senator from Maine were present, he would vote "yea." If the Senator from New York [Mr. Wadsworth] were present, he would vote "nay." I vote "yea."

I also desire to state that if the Senator from Minnesota [Mr. Clapp] were present, he would vote "yea." He is paired with the Senator from Iowa [Mr. Kenyon], who would vote "nay."

Mr. JONES. I have a pair with the junior Senator from Virginia [Mr. SWANSON] and therefore withhold my vote.

Mr. LA FOLLETTE. The Senator from Idaho [Mr. BORAH] is paired with the Senator from North Dakota [Mr. Gronna]. If the Senator from Idaho were present, he would vote "nay," and the Senator from North Dakota would vote "yea."

Mr. THOMAS. The Senator from Virginia [Mr. Martin] is necessarily absent. If he were present he would vote "yea."

Mr. HUGHES. My colleague [Mr. Martin] is necessarily absent from the Senate. If present, he would vote "yea." He is paired with the Senator from New Mexico [Mr. Fall].

Mr. OWEN. I have a pair with the Senator from New Mexico [Mr. Catron]. I transfer that pair to the Senator from Florida [Mr. Bryan] and vote "yea."

Mr. JAMES. I desire to announce that the Senator from Ohio [Mr. Pomerene] is paired with the junior Senator from Massachusetts [Mr. Weeks]. If present, the Senator from Ohio would vote in favor of the confirmation of Mr. Brandeis, and the Senator from Massachusetts would vote against the confirmation.

Mr. SAULSBURY. I am paired with the junior Senator from Rhode Island [Mr. Colt]. I transfer that pair to the Senator from South Dakota [Mr. Johnson] and vote "yea." If the Senator from South Dakota were present, he would vote "yea."

Mr. SUTHERLAND. I have a general pair with the senior Senator from Arkansas [Mr. Clarke], who is absent, but I am at liberty to vote on this question, and I vote "nay."

Mr. THOMAS. I have a general pair with the Senator from North Dakota [Mr. McCumber]. I transfer that pair to the senior Senator from Virginia [Mr. Martin] and vote "yea."

Mr. LODGE. I desire to announce that my colleague [Mr. Weeks] is paired with the senior Senator from Ohio [Mr. Pomerene]. If my colleague were present, he would vote "nay."

Mr. WILLIAMS. I have a general pair with the senior Senator from Pennsylvania [Mr. Penrose]. If present, he would vote "nay," and I would vote "yea," if I had the privilege; but I withhold my vote in consequence of my pair.

Mr. THOMPSON. I have a pair with the Senator from Illinois [Mr. Sherman], but under an arrangement with the Senator from Illinois, if his vote is not controlling, I am permitted to vote on this nomination. I therefore vote "yea." I am requested to announce that if he were present he would vote "nay."

Mr. TILLMAN. I have a pair with the junior Senator from West Virginia [Mr. GOFF]. If I were at liberty to vote, I would vote "yea."

Mr. CURTIS. I have been requested to announce that the Senator from Maine [Mr. Burleigh] is paired with the Senator from Arkansas [Mr. ROBINSON].

Mr. NORRIS. Mr. President——

The VICE PRESIDENT. Does the Senator from Oregon yield to the Senator from Nebraska?

Mr. McNARY. I do.

Mr. NORRIS. I desire to have read a letter from Mr. Green, the head of the American Federation of Labor. Will the Senator yield for that purpose?

Mr. McNARY. I yield.

Mr. NORRIS. I send the letter to the desk and ask to have it read.

The VICE PRESIDENT. Without objection, the letter will be read.

The Chief Clerk read as follows:

AMERICAN FEDERATION OF LABOR,
Washington, D. C., April 29, 1930.

Hon. GEORGE W. NORRIS,
United States Senate, Washington, D. C.

DEAR SENATOR NORRIS: I am inspired to write you this additional communication because of the defense which Judge Parker makes in reference to the decision he rendered in the Red Jacket "yellow dog" case. His defense is represented in a letter addressed to Senator OVERMAN and which was given wide publicity in the newspapers of Monday, April 28.

Judge Parker reiterates what the Department of Justice had already stated, that in the Red Jacket decision he was compelled to follow the Supreme Court's ruling in the celebrated Hitchman case. It must be apparent to thinking men that this is no defense. The facts upon which the Hitchman decision was based were different from the fact established in the Red Jacket case. The fitness and qualifications of a judge are shown by his judicial ability to distinguish the line of difference between the facts in cases of this kind. A judge must be able to do more than merely seek the easiest way in rendering decisions. It is easy to follow precedent but it requires a keen, analytical mind to determine facts and distinguishing differences in cases which, on the surface, appear to be similar.

It is perfectly clear, even to a layman, that Judge Parker, in his opinion and decision in the Red Jacket Consolidated Coal & Coke Co. case, went far beyond the doctrines laid down by the Supreme Court of the United States in the Hitchman case, and that he has, in effect, practically stated the law to be that it is unlawful by any means whatsoever (even though there be no element of violence, threat, fraud, or deceit) to endeavor to induce or persuade an employee to join a labor union if such employee is working under an alternative agreement described and generally known as a "yellow dog" contract.

Furthermore, in giving consideration to the Supreme Court's decision he evidently gave no weight to the dissenting opinion of Justice Brandeis and Justice Holmes in the Hitchman case.

The very vital question of human rights and human relations in industry is involved in the decision rendered by Judge Parker in the Red Jacket case. The question is, Shall working men and women be consigned to a condition bordering on servitude, and shall that condition be perpetuated through an injunction issued by a Federal jury? Are peaceful persuasion, free assemblage, and free speech to be made crimes through the issuance of injunctions such as the one that was sustained by Judge Parker in the Red Jacket case? Is a man entertaining such views, so subversive of human rights, to be elevated to the Supreme Court of the United States, where he shall remain for life, not only to follow precedent but to help make precedent?

Labor has a firm faith in our governmental institutions and in our form of government. In opposing the confirmation of Judge Parker labor is in no way attacking our institutions and particularly the Supreme Court of the United States. Our opposition is to Judge Parker and to his appointment to the Supreme Court. It is our opinion that he has shown a mental and judicial bias which renders him unfit to occupy such an exalted and responsible position.

The "yellow dog" contract has no place in our free Government. If introduced generally into industry and protected by injunctions, such as Judge Parker upheld, it would effectively destroy the exercise of the right of American working men and women to join trade unions for mutual helpfulness and mutual protection. The opposition of the American Federation of Labor and its great membership to the confirmation of Judge Parker to be a member of the Supreme Court of the United States is based upon a most thorough study of Judge Parker's decisions.

Labor is not influenced by partisan or political considerations. Under its nonpartisan political policy, labor will support men who are equipped to serve regardless of political affiliation. In like manner, we are obligated, under this policy, to oppose men who lack a proper appreciation of human rights, human values, and human relationships in industry. Labor's fight, in matters of this kind, is not for labor alone. All the people are affected and interested from a practical, economic, political, and patriotic point of view. It is unwise to force the appointment, as a member of the Supreme Court of the United States, of a man who is so universally objectionable as Judge Parker.

The practical application of the principles which he laid down in the Red Jacket Consolidated Coal & Coke Co. case has served to destroy confidence in the courts and in the administration of justice.

Respectfully submitted.

WM. GREEN,
President American Federation of Labor.

Mr. McNARY. Mr. President, I am advised that the senior Senator from Delaware [Mr. HASTINGS] desires briefly to discuss the pending question; and I, therefore, suggest the absence of a quorum.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll twice, and the following Senators answered to their names:

Allen	George	McCulloch	Robsion, Ky.
Ashurst	Gillett	McKellar	Sheppard
Baird	Glass	McNary	Steiwer
Black	Glenn	Norris	Sullivan
Blease	Hale	Oddie	Swanson
Borah	Hastings	Overman	Townsend
Capper	Hawes	Patterson	Trammell
Connally	Hebert	Phipps	Tydings
Copeland	Howell	Pine	Walsh, Mont.
Couzens	Johnson	Pittman	Watson
Deneen	Jones	Ransdell	Wheeler
Fess	Kendrick	Robinson, Ind.	

The VICE PRESIDENT. Forty-seven Senators have answered to their names—not a quorum.

Mr. McNARY. Mr. President, in view of the situation, I move that the Senate adjourn in executive session until 12 o'clock to-morrow.

The motion was agreed to; and (at 4 o'clock and 45 minutes p. m.) the Senate, in executive session, adjourned until to-morrow, Wednesday, April 30, 1930, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate April 29 (legislative day of April 21), 1930

POSTMASTERS

ALABAMA

John H. McEniry to be postmaster at Bessemer, Ala., in place of J. H. McEniry. Incumbent's commission expires May 28, 1930.

Charlie S. Robbins to be postmaster at Good Water, Ala., in place of C. S. Robbins. Incumbent's commission expires May 6, 1930.

Annie M. Stevenson to be postmaster at Notasulga, Ala., in place of A. M. Stevenson. Incumbent's commission expired March 22, 1930.

ARKANSAS

Addie Gilbert to be postmaster at Decatur, Ark., in place of Addie Gilbert. Incumbent's commission expires May 12, 1930.

Jesse L. Russell to be postmaster at Harrison, Ark., in place of J. L. Russell. Incumbent's commission expires May 12, 1930.

Ida Burns to be postmaster at Heber Springs, Ark., in place of Ida Burns. Incumbent's commission expired March 30, 1930.

CALIFORNIA

John B. Horner to be postmaster at Fullerton, Calif., in place of J. B. Horner. Incumbent's commission expires May 28, 1930.

George M. Eaby to be postmaster at La Habra, Calif., in place of G. M. Eaby. Incumbent's commission expired April 13, 1930.

COLORADO

Roy H. Horner to be postmaster at Wiley, Colo., in place of R. H. Horner. Incumbent's commission expired April 28, 1930.

CONNECTICUT

Oliver M. Bristol to be postmaster at Durham, Conn., in place of O. M. Bristol. Incumbent's commission expires May 6, 1930.

William N. Manee to be postmaster at Moodus, Conn., in place of W. N. Manee. Incumbent's commission expires May 20, 1930.

FLORIDA

Maggie M. Folsom to be postmaster at Port Tampa City, Fla., in place of M. M. Folsom. Incumbent's commission expires May 17, 1930.

GEORGIA

John S. Lunsford to be postmaster at Elberton, Ga., in place of J. S. Lunsford. Incumbent's commission expires May 28, 1930.

Jackson C. Atkinson to be postmaster at Midville, Ga., in place of J. C. Atkinson. Incumbent's commission expires May 21, 1930.

HAWAII

Edward Akui Heu to be postmaster at Kaunakakai, Hawaii, in place of J. M. Hill, resigned.

ILLINOIS

Roger Walwark to be postmaster at Ava, Ill., in place of Roger Walwark. Incumbent's commission expires May 28, 1930.

Lawrence D. Sickles to be postmaster at Bowen, Ill., in place of M. G. Yarnell. Incumbent's commission expired December 18, 1929.

Henry E. Burns to be postmaster at Chester, Ill., in place of H. E. Burns. Incumbent's commission expires May 12, 1930.

Nellie Mitchel to be postmaster at Mansfield, Ill., in place of Nellie Mitchel. Incumbent's commission expires May 14, 1930.

Delta C. Lowe to be postmaster at Mason City, Ill., in place of D. C. Lowe. Incumbent's commission expired March 3, 1930.

Frank E. Whitfield to be postmaster at Medora, Ill., in place of F. E. Whitfield. Incumbent's commission expires May 28, 1930.

Charles L. Oetting to be postmaster at Menard, Ill. Office became presidential July 1, 1929.

Joseph M. Donahue to be postmaster at Monticello, Ill., in place of J. M. Donahue. Incumbent's commission expires May 4, 1930.

Lloyd E. Lamb to be postmaster at Paris, Ill., in place of P. P. Shutt, deceased.

Anthony L. Faletti to be postmaster at Springvalley, Ill., in place of A. L. Faletti. Incumbent's commission expires May 4, 1930.

Glenn W. Weeks to be postmaster at Tremont, Ill., in place of G. W. Weeks. Incumbent's commission expires May 18, 1930.

IOWA

Homer G. Games to be postmaster at Calamus, Iowa, in place of H. G. Games. Incumbent's commission expires May 28, 1930.

Raymond W. Ellis to be postmaster at Norwalk, Iowa, in place of R. W. Ellis. Incumbent's commission expires May 28, 1930.

William W. Sturdivant to be postmaster at Wesley, Iowa, in place of W. W. Sturdivant. Incumbent's commission expires May 28, 1930.

KANSAS

William E. Ferguson to be postmaster at Latham, Kans., in place of W. E. Ferguson. Incumbent's commission expires May 28, 1930.

Benson L. Mickel to be postmaster at Soldier, Kans., in place of B. L. Mickel. Incumbent's commission expires May 28, 1930.

KENTUCKY

Marvin W. Barnes to be postmaster at Elizabethtown, Ky., in place of M. W. Barnes. Incumbent's commission expired December 15, 1929.

LOUISIANA

Esther Boudreaux to be postmaster at Donner, La., in place of Esther Boudreaux. Incumbent's commission expired April 9, 1930.

Harry J. Monroe to be postmaster at Elton, La., in place of H. J. Monroe. Incumbent's commission expired April 9, 1930.

Dennis M. Foster, jr., to be postmaster at Lake Charles, La., in place of D. M. Foster, jr. Incumbent's commission expired April 9, 1930.

MAINE

George H. Rounds to be postmaster at Naples, Me., in place of G. H. Rounds. Incumbent's commission expires May 28, 1930.

MARYLAND

William R. Wilson to be postmaster at Hebron, Md., in place of J. O. Wilson, removed.

MASSACHUSETTS

William F. O'Toole to be postmaster at South Barre, Mass., in place of W. F. O'Toole. Incumbent's commission expires May 28, 1930.

Cleon F. Fobes to be postmaster at Stoughton, Mass., in place of C. F. Fobes. Incumbent's commission expires May 28, 1930.

James H. Jenks, jr., to be postmaster at West Dennis, Mass., in place of J. H. Jenks, jr. Incumbent's commission expires May 28, 1930.

MICHIGAN

Martin S. Markham to be postmaster at Alanson, Mich., in place of M. S. Markham. Incumbent's commission expires May 14, 1930.

Benton H. Miller to be postmaster at Cement City, Mich., in place of B. H. Miller. Incumbent's commission expires May 28, 1930.

Selma O'Neill to be postmaster at Rockford, Mich., in place of Selma O'Neill. Incumbent's commission expires May 28, 1930.

George K. Hoyt to be postmaster at Suttons Bay, Mich., in place of G. K. Hoyt. Incumbent's commission expires May 28, 1930.

MINNESOTA

Arlie R. Wilder to be postmaster at Amboy, Minn., in place of A. R. Wilder. Incumbent's commission expires May 25, 1930.

Anna E. Miller to be postmaster at Kelliher, Minn., in place of A. E. Miller. Incumbent's commission expires May 21, 1930.

Oliver A. Matson to be postmaster at Kiester, Minn., in place of O. A. Matson. Incumbent's commission expires May 25, 1930.

Archie M. Hayes to be postmaster at McGregor, Minn., in place of A. M. Hayes. Incumbent's commission expires May 21, 1930.

Robert L. Bresnan to be postmaster at Madison Lake, Minn., in place of R. L. Bresnan. Incumbent's commission expired April 13, 1930.

MISSISSIPPI

Blanche Gallaspy to be postmaster at Pelshatchee, Miss., in place of J. L. Barrow. Incumbent's commission expired February 21, 1929.

MISSOURI

Arthur Rice to be postmaster at Alton, Mo., in place of Arthur Rice. Incumbent's commission expires May 29, 1930.

Ferd D. Lahmeyer to be postmaster at Bland, Mo., in place of F. D. Lahmeyer. Incumbent's commission expires May 6, 1930.

Charles B. Genz to be postmaster at Louisiana, Mo., in place of C. B. Genz. Incumbent's commission expired March 16, 1930.

George W. Davies to be postmaster at Osceola, Mo., in place of G. W. Davies. Incumbent's commission expired March 11, 1930.

W. Arthur Smith to be postmaster at Purdin, Mo., in place of W. A. Smith. Incumbent's commission expired April 19, 1930.

Philip G. Wild to be postmaster at Spickard, Mo., in place of P. G. Wild. Incumbent's commission expires May 29, 1930.

NEBRASKA

James E. Schoonover to be postmaster at Aurora, Nebr., in place of J. E. Schoonover. Incumbent's commission expires May 29, 1930.

Harold Hjelmfelt to be postmaster at Holdrege, Nebr., in place of Harold Hjelmfelt. Incumbent's commission expired April 13, 1930.

Isaac T. Samuelson to be postmaster at Polk, Nebr., in place of A. W. Shafer. Incumbent's commission expired December 16, 1929.

NEW HAMPSHIRE

Herbert Perkins to be postmaster at Hampton, N. H., in place of Herbert Perkins. Incumbent's commission expired January 21, 1930.

NEW JERSEY

Ralph G. Riggins to be postmaster at Bridgeton, N. J., in place of R. G. Riggins. Incumbent's commission expires May 21, 1930.

William Jeffers to be postmaster at Hackensack, N. J., in place of William Jeffers. Incumbent's commission expires May 17, 1930.

John J. Schilcox to be postmaster at Keasbey, N. J., in place of J. J. Schilcox. Incumbent's commission expires May 21, 1930.

Erwin K. Kenworthy to be postmaster at Millington, N. J., in place of E. K. Kenworthy. Incumbent's commission expires May 29, 1930.

John A. Wheeler to be postmaster at Monmouth Beach, N. J., in place of J. A. Wheeler. Incumbent's commission expires May 21, 1930.

Arthur S. Warner to be postmaster at Spring Lake Beach, N. J., in place of A. S. Warner. Incumbent's commission expires May 21, 1930.

NEW MEXICO

Ernest A. Hannah to be postmaster at Artesia, N. Mex., in place of E. A. Hannah. Incumbent's commission expires May 29, 1930.

John C. Luikart to be postmaster at Clovis, N. Mex., in place of J. C. Luikart. Incumbent's commission expires May 29, 1930.

Joseph H. Gentry to be postmaster at Fort Stanton, N. Mex., in place of J. H. Gentry. Incumbent's commission expires May 29, 1930.

NEW YORK

Donald M. Dickson to be postmaster at Andes, N. Y., in place of D. M. Dickson. Incumbent's commission expires May 4, 1930.

Edna Glezen to be postmaster at Blasdell, N. Y., in place of Edna Glezen. Incumbent's commission expired December 21, 1929.

May L. McLaughlin to be postmaster at Blue Mountain Lake, N. Y., in place of M. L. McLaughlin. Incumbent's commission expires May 28, 1930.

C. Blaine Persons to be postmaster at Delevan, N. Y., in place of C. B. Persons. Incumbent's commission expires May 28, 1930.

Frank D. Gardner to be postmaster at De Ruyter, N. Y., in place of F. D. Gardner. Incumbent's commission expires May 28, 1930.

Raymond H. Ferrand to be postmaster at Gardenville, N. Y., in place of R. H. Ferrand. Incumbent's commission expired December 21, 1929.

Denton D. Lake to be postmaster at Gloversville, N. Y., in place of D. D. Lake. Incumbent's commission expires May 28, 1930.

Joseph A. Colin to be postmaster at Johnstown, N. Y., in place of J. A. Colin. Incumbent's commission expires May 28, 1930.

John C. Jubin to be postmaster at Lake Placid Club, N. Y., in place of J. C. Jubin. Incumbent's commission expires May 28, 1930.

Darwin E. Hibbard to be postmaster at North Collins, N. Y., in place of D. E. Hibbard. Incumbent's commission expired December 21, 1929.

Lewis L. Erhart to be postmaster at Pleasant Valley, N. Y., in place of L. L. Erhart. Incumbent's commission expired February 18, 1930.

Michael H. Mangini to be postmaster at Selkirk, N. Y., in place of M. H. Mangini. Incumbent's commission expired December 21, 1929.

James McLusky to be postmaster at Syracuse, N. Y., in place of James McLusky. Incumbent's commission expired April 20, 1930.

NORTH CAROLINA

Charles N. Bodenheimer to be postmaster at Elkin, N. C., in place of C. N. Bodenheimer. Incumbent's commission expires May 18, 1930.

Orin R. York to be postmaster at High Point, N. C., in place of O. R. York. Incumbent's commission expires May 18, 1930.

Hettie B. Morgan to be postmaster at Seaboard, N. C., in place of H. B. Morgan. Incumbent's commission expires May 18, 1930.

NORTH DAKOTA

Cassie Stewart to be postmaster at Butte, N. Dak., in place of Cassie Stewart. Incumbent's commission expires May 4, 1930.

T. H. Hulbert Casement to be postmaster at Fordville, N. Dak., in place of T. H. H. Casement. Incumbent's commission expires May 20, 1930.

Blanche Huffman to be postmaster at Oberon, N. Dak., in place of M. A. Wahlberg, resigned.

Ovidia G. Black to be postmaster at Werner, N. Dak., in place of O. G. Black. Incumbent's commission expires May 20, 1930.

OHIO

William S. Burcher to be postmaster at Beallsville, Ohio, in place of W. S. Burcher. Incumbent's commission expired March 16, 1930.

Herman W. Davis to be postmaster at Bedford, Ohio, in place of H. W. Davis. Incumbent's commission expired February 23, 1930.

Harold A. Carson to be postmaster at Bergholz, Ohio, in place of H. A. Carson. Incumbent's commission expires May 20, 1930.

Elizabeth P. CarSkaden to be postmaster at Castalia, Ohio, in place of E. P. CarSkaden. Incumbent's commission expires May 20, 1930.

OKLAHOMA

Ulysses S. Markham to be postmaster at Caddo, Okla., in place of U. S. Markham. Incumbent's commission expired March 11, 1930.

Lincoln C. Mahanna to be postmaster at Headrick, Okla., in place of L. C. Mahanna. Incumbent's commission expired December 21, 1929.

OREGON

Ida M. Clayton to be postmaster at Rockaway, Oreg., in place of I. M. Clayton. Incumbent's commission expires May 18, 1930.

PENNSYLVANIA

Sylvester D. R. Hill to be postmaster at Charleroi, Pa., in place of S. D. R. Hill. Incumbent's commission expires May 26, 1930.

Christian D. Doerr to be postmaster at Colver, Pa., in place of C. D. Doerr. Incumbent's commission expires May 28, 1930.

George H. Cunningham to be postmaster at Emaus, Pa., in place of G. H. Cunningham. Incumbent's commission expired April 9, 1930.

Margaret Patterson to be postmaster at Langeloth, Pa., in place of Margaret Patterson. Incumbent's commission expired December 21, 1929.

Charles W. Schlosser to be postmaster at Waterford, Pa., in place of C. W. Schlosser. Incumbent's commission expires May 25, 1930.

RHODE ISLAND

Frank W. Crandall to be postmaster at Hope Valley, R. I., in place of F. W. Crandall. Incumbent's commission expires May 20, 1930.

Wilfred R. Easterbrooks to be postmaster at Wakefield, R. I., in place of W. R. Easterbrooks. Incumbent's commission expires May 20, 1930.

SOUTH CAROLINA

Charles L. Potter to be postmaster at Cowpens, S. C., in place of L. E. Setsler, resigned.

Paul F. W. Waller to be postmaster at Myers, S. C., in place of P. F. W. Waller. Incumbent's commission expires May 26, 1930.

Pierce M. Huff to be postmaster at Piedmont, S. C., in place of P. M. Huff. Incumbent's commission expires May 12, 1930.

SOUTH DAKOTA

Fred Boller to be postmaster at Beresford, S. Dak., in place of Fred Boller. Incumbent's commission expires March 29, 1930.

TENNESSEE

James G. McKenzie to be postmaster at Big Sandy, Tenn., in place of J. G. McKenzie. Incumbent's commission expired April 2, 1930.

George B. Beaver to be postmaster at McMinnville, Tenn., in place of G. B. Beaver. Incumbent's commission expired March 15, 1930.

George W. Thompson to be postmaster at Morrison, Tenn., in place of E. P. Stubblefield, deceased.

Hugh B. Nunn to be postmaster at Ripley, Tenn., in place of H. B. Nunn. Incumbent's commission expires May 14, 1930.

TEXAS

Lewis E. Wigton to be postmaster at Alamo, Tex., in place of L. E. Wigton. Incumbent's commission expires May 5, 1930.

James L. Hunter to be postmaster at Austin, Tex., in place of J. L. Hunter. Incumbent's commission expires May 28, 1930.

Hubert L. Ford to be postmaster at Bellevue, Tex., in place of H. L. Ford. Incumbent's commission expires May 12, 1930.

Jacob Bennett to be postmaster at Bremond, Tex., in place of Jacob Bennett. Incumbent's commission expired April 5, 1930.

Florence M. Geyer to be postmaster at College Station, Tex., in place of F. M. Geyer. Incumbent's commission expired April 28, 1930.

Jasper M. Brooks to be postmaster at Copperas Cove, Tex., in place of J. M. Brooks. Incumbent's commission expired April 13, 1930.

Lewis B. Lindsay to be postmaster at Gainesville, Tex., in place of J. L. Hickson, deceased.

Hazle B. Thomas to be postmaster at Gause, Tex., in place of H. B. Thomas. Incumbent's commission expires May 26, 1930.

Sidney B. Smith to be postmaster at Gorman, Tex., in place of S. B. Smith. Incumbent's commission expires May 17, 1930.

James F. Rodgers to be postmaster at Harlingen, Tex., in place of J. F. Rodgers. Incumbent's commission expires May 26, 1930.

Neppie Rutherford to be postmaster at Lexington, Tex., in place of G. L. Hardcastle, deceased.

Ada H. Worley to be postmaster at Malone, Tex., in place of A. H. Worley. Incumbent's commission expired April 5, 1930.

Fred M. Carrington to be postmaster at Marquez, Tex., in place of F. M. Carrington. Incumbent's commission expired March 25, 1930.

Sam G. Reid to be postmaster at Oglesby, Tex., in place of S. G. Reid. Incumbent's commission expired March 11, 1930.

Robert E. Slocum to be postmaster at Pharr, Tex., in place of R. E. Slocum. Incumbent's commission expired January 25, 1930.

Thomas B. White to be postmaster at Rogers, Tex., in place of T. B. White. Incumbent's commission expired April 28, 1930.

Merrida E. Ware to be postmaster at Seagraves, Tex., in place of M. C. Ware, deceased.

Royce E. Dowdy to be postmaster at Trent, Tex., in place of R. E. Dowdy. Incumbent's commission expires May 26, 1930.

John F. Warrington to be postmaster at Valley Mills, Tex., in place of J. F. Warrington. Incumbent's commission expired April 5, 1930.

VIRGINIA

David A. Sergent to be postmaster at Big Stone Gap, Va., in place of H. H. Slemp. Incumbent's commission expired January 27, 1929.

Roland L. Somers to be postmaster at Bloxom, Va., in place of R. L. Somers. Incumbent's commission expired April 1, 1930.

Silverius C. Hall to be postmaster at Hallwood, Va., in place of S. C. Hall. Incumbent's commission expired April 1, 1930.

William P. Nye, jr., to be postmaster at Radford, Va., in place of W. P. Nye, jr. Incumbent's commission expires May 4, 1930.

George N. Kirk to be postmaster at St. Charles, Va., in place of G. N. Kirk. Incumbent's commission expired March 16, 1930.

Herbert T. Thomas to be postmaster at Williamsburg, Va., in place of H. T. Thomas. Incumbent's commission expires May 4, 1930.

WASHINGTON

Joseph A. Dean to be postmaster at Castle Rock, Wash., in place of J. A. Dean. Incumbent's commission expired April 28, 1930.

Arthur H. Eldredge to be postmaster at Colfax, Wash., in place of A. H. Eldredge. Incumbent's commission expired April 15, 1930.

Carl J. Gunderson to be postmaster at East Stanwood, Wash., in place of C. J. Gunderson. Incumbent's commission expires May 21, 1930.

Nelson J. Craigue to be postmaster at Everett, Wash., in place of N. J. Craigue. Incumbent's commission expires May 21, 1930.

Jay Faris to be postmaster at Grandview, Wash., in place of C. E. Haasze, removed.

Wayne L. Talkington to be postmaster at Harrington, Wash., in place of W. L. Talkington. Incumbent's commission expires May 5, 1930.

Amy E. Ide to be postmaster at Outlook, Wash., in place of A. E. Ide. Incumbent's commission expires May 5, 1930.

Ernest C. Day to be postmaster at Palouse, Wash., in place of R. H. Clark. Incumbent's commission expired January 21, 1930.

Lewis Murphy to be postmaster at Republic, Wash., in place of Lewis Murphy. Incumbent's commission expires May 21, 1930.

Thomas B. Southard to be postmaster at Wilsoncreek, Wash., in place of R. H. Lee. Incumbent's commission expired January 29, 1930.

Herman L. Leeper to be postmaster at Yakima, Wash., in place of H. L. Leeper. Incumbent's commission expires May 5, 1930.

WEST VIRGINIA

John O. Stone to be postmaster at Davy, W. Va., in place of J. O. Stone. Incumbent's commission expired March 25, 1930.

WISCONSIN

Paul W. Schuette to be postmaster at Ableman, Wis., in place of P. W. Schuette. Incumbent's commission expires May 21, 1930.

George E. Grob to be postmaster at Auburndale, Wis., in place of G. E. Grob. Incumbent's commission expires May 21, 1930.

Leslie D. Jenkins to be postmaster at Bagley, Wis., in place of L. D. Jenkins. Incumbent's commission expires May 21, 1930.

Leslie H. Thayer to be postmaster at Birchwood, Wis., in place of L. H. Thayer. Incumbent's commission expires May 4, 1930.

Paul E. Kleist to be postmaster at Hustisford, Wis., in place of F. A. Roeseler. Incumbent's commission expired January 21, 1930.

Carlton C. Good to be postmaster at Neshkoro, Wis., in place of C. C. Good. Incumbent's commission expired April 23, 1930.

Wallace M. Comstock to be postmaster at Oconto, Wis., in place of W. M. Comstock. Incumbent's commission expires May 21, 1930.

Edith Best to be postmaster at Prairie Farm, Wis., in place of Edith Best. Incumbent's commission expires May 29, 1930.

John E. Wehrman to be postmaster at Prescott, Wis., in place of J. E. Wehrman. Incumbent's commission expires May 20, 1930.

Clara H. Schmitz to be postmaster at St. Cloud, Wis., in place of C. H. Schmitz. Incumbent's commission expired December 21, 1929.

Donald C. McDowell to be postmaster at Soldiers Grove, Wis., in place of D. C. McDowell. Incumbent's commission expires May 21, 1930.

Charles A. Arnot to be postmaster at South Wayne, Wis., in place of C. A. Arnot. Incumbent's commission expires May 21, 1930.

HOUSE OF REPRESENTATIVES

TUESDAY, *April 29, 1930*

The House met at 12 o'clock noon.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

I will never leave thee nor forsake thee; I will go with thee all the way.

When out in the wilderness alone, when bereft of friends and of fortune, when compassed with grief and with gloom, merciful Father, no words could be as comforting. Thy providential care towers above the forbidding horizons of all human need. We thank Thee for Thy promises. Inspire us with their loftiest heights of spiritual exaltation, with the widest sweep of their conquering might, and with their largest breadth of their catholicity. Bless our country with all its leaders. Preserve them from perplexing doubt and perilous drift. Let righteous assertion, patriotic zeal, and good will ring cheerily from border to border and from coast to coast. In the name of the world's Savior. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Craven, its principal clerk, announced that the Senate had agreed to the amendment of the House to the bill (S. 3441) entitled "An act to effect the consolidation of the Turkey Thicket Playground, Recreation and Athletic Field."

The message also announced that the Senate had passed bills of the following titles, in which the concurrence of the House is requested:

S. 3059, An act to provide for the advance planning and regulated construction of certain public works, for the stabilization of industry, and for the prevention of unemployment during periods of business depression; and

S. 3061. An act to amend section 4 of the act entitled "An act to create a Department of Labor," approved March 4, 1913.

PERMISSION TO ADDRESS THE HOUSE

Mr. RAMSEYER. Mr. Speaker, to-morrow is Calendar Wednesday. Of course, I do not know at this time when the business of Calendar Wednesday will be disposed of, but following the disposition of business to-morrow by the Committee on the Merchant Marine and Fisheries, which they wish to bring up, if they close within a reasonable time, I should like to have one hour to conduct a kind of round-table discussion on the economics of the export debenture.

The SPEAKER. The gentleman from Iowa asks unanimous consent that to-morrow, after the disposition of matters in charge of the Committee on the Merchant Marine and Fisheries, he may be permitted to address the House for one hour on the subject of the export debenture. Is there objection?

Mr. TILSON. Mr. Speaker, that is after the disposition of Calendar Wednesday business?

The SPEAKER. After the disposition of all matters brought up by the Committee on the Merchant Marine and Fisheries.

Mr. UNDERHILL. Mr. Speaker, reserving the right to object, will the gentleman explain a little further what he means by a round-table discussion? Does the gentleman mean he is to occupy the hour or that we all may get into this scrap?

Mr. RAMSEYER. Well, after I have discussed the economics, and as I go along with the discussion of the economics, if Members wish to ask questions I will be very pleased, indeed, to yield for such question.

Mr. SNELL. A kind of general discussion.

The SPEAKER. Is there objection?

There was no objection.

ARTICLE BY HON. LINDSAY C. WARREN

Mr. KERR. Mr. Speaker, I ask unanimous consent to extend my remarks by printing in the RECORD a series of articles recently written by my distinguished colleague from North Carolina, Mr. LINDSAY WARREN, which I think are of great literary merit.

The SPEAKER. The gentleman from North Carolina asks unanimous consent to extend his remarks by printing some articles written by his colleague, Mr. WARREN, of North Carolina. Is there objection?

There was no objection.

Mr. KERR. Mr. Speaker, my colleague the gentleman from North Carolina [Mr. WARREN] has recently written a series of historical articles, appearing in the Raleigh News and Observer, that have attracted state-wide interest and comment. They deal with the most interesting period of North Carolina history and show deep study and research and are regarded as an outstanding and notable contribution of historical and literary effort. I ask unanimous consent to extend my remarks by inserting these valuable articles in the RECORD, including an editorial on same by Josephus Daniels.

[Editorial Raleigh News and Observer, December 18, 1929]

LINDSAY C. WARREN, HISTORIAN

The first of one of the best series of articles the News and Observer has offered its readers in a long time appears on another page this morning. It is Congressman LINDSAY WARREN'S story of Beaufort County's contribution to a notable era of the State's history.

Mr. WARREN in the rôle of lawyer and legislator the readers of the News and Observer know very well. It is fair to say that in the rôle of historian they will soon know him just as favorably. He has the faculty for digging into the past for significant details of events and also has the ability to write about them and about the men who participated in them interestingly. If you read nothing else in the paper this morning, read, by all means, this article by Congressman WARREN.

The articles in the series deal with that period of the State's history from 1845 to 1875, and are built up around the great ante and post bellum bar of Washington, composed of Edward Stanly, Richard S. Donnell, Edward J. Warren, Thomas Sparrow, William B. Rodman, Fenner B. Satterthwaite, and David M. Carter. All of these seven men were leading figures of their times. Mr. WARREN is a grandson of Judge Edward J. Warren.

The articles deal with the great political battles before the War between the States; the secession and several constitutional conventions: Washington during the war; the arrest of Mayor Isaiah Respess; the return of Stanly as Lincoln's provisional governor; the convention of 1868, and the work of Judge Rodman in that body; Judge "Jay Bird" Jones on the superior court bench; the Holden impeachment and the election of Vance. The county of Beaufort has always played an influential rôle in the legislative, constitutional, and judicial history of North Carolina, and these articles vividly portray her leaders in a trying period.

BEAUFORT COUNTY'S CONTRIBUTION TO A NOTABLE ERA OF NORTH CAROLINA HISTORY

By Congressman LINDSAY C. WARREN

CHAPTER I

The county of Beaufort in the 225 years of its existence has always played a commanding rôle in the history of the Commonwealth. There have been periods when it leaders rose to great heights and left their indelible impress.

Settled exclusively by the English, its trials and tribulations as an important section of the colony go hand in hand with the rebellion against colonial rule and the unconquerable desire for independence. Undaunted by the Indian massacres of the early days, which almost took her last man, the county rose nobly to the cause of the Revolution, sending more than her quota of fighting men, and furnishing from her great estates even the family plate brought from England. Two of her great public leaders stood out in these times—Col. James Bonner and John Gray Blount. The former commanded the Beaufort County Militia and was preeminent as a man and as a soldier. The latter as a boy from a distinguished family, seeking adventure, had accompanied Daniel Boone as a chain bearer in his pilgrimage to Kentucky, and during the administration of Thomas Jefferson was to become one of the largest individual landowners in America. It was these two men who molded the sentiment and policy of the county in that early day. For the next 40 years, beginning with the accession of Jefferson, the sons of these men as well as other prominent figures came on the scene, and Beaufort County sat high in the councils of the State. It is my intent at some other time to treat of this period.

The purpose of these articles is to portray, historically correctly, I trust, some of the happenings of that great era in North Carolina from 1845 to 1875 and to bring forth again those men who became dominant actors and who either lived in Beaufort County at the time or who were closely identified with it. Certainly no period in our history could be more interesting. They were the halcyon days before the war, and then the dregs and despair that followed it. Beaufort County shared in its pleasures, drank deep in its sorrows, and contributed greatly in its reconstruction.

For 40 years before the War between the States, Washington was a pleasure-loving but ambitious community. It was a port of no small repute. Out over the bar of Ocracoke Inlet to the West Indies, and northern points, went the fleet of Fowle ships carrying lumber and returning with merchandise, fruits, and molasses. Commerce teemed in the harbor and the docks were a busy scene. It was a day of large plantations, high living, fast horses, hard drinking, and political strife. The first day of court was always a gala affair, and set aside for political discussion. Any orator could get a crowd. The social reputation of the community was widely known. The people were hospitable to their hurt, and entertained lavishly. The slaves did the work. But withal, there was culture and refinement in the homes, and many of them were centers of attraction for learned people.

An outstanding event in its social life had been in 1819, when the town was visited by President James Monroe and his Secretary of War, John C. Calhoun. It was occasion for great celebration, the distinguished guests being met a few miles from town by a cavalcade of 100 citizens. Cannon boomed out the presidential salute. They were escorted to the courthouse lawn where the President spoke to thousands. That night, a dance, graced by ladies and gentlemen in resplendent dress, culminated the entertainment, Mr. Monroe taking part in the festivities and making himself most agreeable.

The town was included in the itineraries of many of the prominent men of the day, who came here to consult the great leaders and enjoy the social life. In the summer of 1836, Washington was visited by one of her native sons in the person of Hon. Churchill C. Cambreleng. He was born there but moved to New York City at the age of 16, and subsequently engaged there in the mercantile business. He was elected to Congress as a Tammany Democrat and served for 18 years. At the time of his visit to Washington he was chairman of the Ways and Means Committee, enjoyed the friendship and confidence of Jackson, and had always been a tower of strength to him in his fight on the bank. Mr. Cambreleng spoke at Washington advocating the election of his close friend, Mr. Van Buren, but Beaufort County voted heavily against his candidate in the election. Two years later he was defeated for Congress and Van Buren thereupon appointed him as minister to Russia, where he served with great distinction. Judge Stephen C. Bragaw is one of his relatives and bears the name of his brother.

A discussion of the men and measures of the age beginning in 1845 necessarily must be woven around the legal fraternity. At that time politics was an exalted profession and the bar, on account of their educational qualifications, were looked to by the people as leaders of thought and exponents of issues. For 125 years the bar of Washington has been without a superior in the legal history of the State. The statement is made advisedly, but with knowledge of the groups that practiced there in each decade. Certainly this was true in the early fifties, when Edward Stanly, Thomas Sparrow, Edward J. Warren, William B. Rodman, Fenner B. Satterthwaite, Richard S. Donnell, and David M. Carter took their seats at the counsel tables in the same courthouse at Washington that stands to-day. Of this bar only William B. Rodman was born in Beaufort County. Aside from being a good place to live, there was considerable litigation in the county, and men like Stanly and Donnell forsook their native Craven and moved there.

In 1846 there came to Washington from the hills of his native Vermont a young man 20 years of age from a long line of Massachusetts ancestry. He had just graduated with high distinction from Dartmouth College, founded by his maternal ancestor, Doctor Wheelock. His name was Edward Jenner Warren. Tall, broad breasted, muscular, and erect, in appearance he was the acme of physical manhood, but the rigors of the cold northern climate had already affected him and he was moved to seek a milder temperature. He was a part of that migration of young men from New England that came south in the early forties. All were graduates of Tufts, Dartmouth, Yale, or Harvard, and they settled in Elizabeth City, Washington, and in Wilmington, N. C., and in Charleston, S. C. The South was still in the prime of her importance in the life of the Nation, and these young men, some as lawyers, some as physicians, and others as school-teachers, came seeking their opportunity and marrying into the older families. President Coolidge once told the writer that he became greatly interested in the southward trek of these able young men from his section during that period and used it as his subject when addressing the New England Society of Charleston when he was Vice President.

Edward J. Warren came as a school-teacher, finding time in his spare moments to read law, and was admitted to the bar in 1848. He shortly married Deborah Virginia Bonner, daughter of Col. Richard Bonner, a member of the council of state, long influential and powerful in affairs and the largest planter and wealthiest man in Beaufort County. Fresh from Dartmouth, still haunted by the memories of Webster, young Warren made him his political ideal, espoused both his cause and his theories and frequently corresponded with him. He cast his first vote in North Carolina for the Whig candidate, and within three years became outstanding as one of the younger Whig leaders. His early training and environment, the friendship of his Revolutionary ancestors with Washington and the Adamses, his admiration for Webster, and his hatred of the nullification doctrine of Calhoun gave him all of the requisites for a virile leadership in a section which was already in sympathy with his beliefs.

But from the beginning he was essentially a lawyer. His contemporaries at the bar scintillated with brilliance, both in the knowledge

of the law and the powers of oratory. It was no local reputation these men had. As lawyers they rode the circuit of the eastern courts and each established himself. The old court minute books of the East attest their appearances and their hard-fought victories and defeats. Each had his special attainments, but in knowledge of the law all were profound.

"In Warren," wrote one of them, "the soft and tender seemed to find no lodgement in his composition, but the noble and generous, in fullest measure, made large reparation for their absence." He was lofty and austere and socially was retiring and unconvivial but loved the company of a few chosen friends, and with them, like Doctor Johnson, would indulge in "elephantine jocularity." He was an accomplished scholar and literatus.

Edward Stanly, born in New Bern, and a graduate of Norwich University, possessed all the force as well as logic that is generally given an able man. In his younger days he was hot-headed and ill-tempered and promptly met on the dueling ground a Member of the House from Alabama over an imaginary insult, but which resulted in no harm to either. But in his latter days Mr. Stanly calmed.

Thomas Sparrow, likewise born in New Bern, had graduated with great distinction at Princeton, being the valedictorian of his class and receiving from that great institution both his A. B. and master's degrees. He read law under Judge Gaston, and moved to Washington and formed a partnership with Stanly. He was a profound student, and a forceful debater and orator. His appealing personality gathered men around him.

Richard S. Donnell was also born in New Bern. He was a graduate of the University of North Carolina and of Yale, and was a grandson of Gov. Richard Dobbs Speight. He was a man of commanding appearance, quick and decisive in his actions, and thorough in the preparation of his cases. He was a clear thinker and went to the heart of every problem.

William Blount Rodman, a grandson of John Gray Blount, was born in Washington, and educated at the university. He was small of stature and rather rotund. He was a fluent speaker, possessing a concise and analytical mind and knew the history of his State such as few men did. Later as a writer of legal history he had few superiors.

David M. Carter was nearly 6 feet tall and of large frame. He was born in Hyde County and attended the university. He had red hair and blue eyes, and at times an ungovernable temper. When in a rage, his countenance was ugly beyond description. He was a good hater. To his friends he was as true as steel. He detested his enemies. He was as brave as a lion. He was a powerful, ruthless advocate who brooked no opposition. After the war he formed a partnership with Mr. Warren.

Fenner B. Satterthwaite lived just over the line in Pitt County, but practiced in Washington regularly and moved there after the war. He had a natural gift for the law. He rarely cracked a book, but depended on his commanding appearance and striking personality, his knowledge of the people, and his ability to speak. And quite successful was he.

Such was the bar of Washington in 1850. There was not a case brought in Beaufort County that these men were not pitted against each other, and at every courthouse in the eastern country where they appeared, one or more of them would arise and address his fellow citizens on the issues of the day. Warren, Stanly, Sparrow, Donnell, Satterthwaite, and Carter were Whigs, while Rodman carried the Democratic banner alone. Beaufort was a Whig county. In the earlier days it had stood by General Jackson, but it had annihilated Van Buren, Polk, Cass, Pierce, and Buchanan. Its members of the legislature had been Whigs, and the county always loyally supported Morehead and Graham.

In 1853, after five years at the bar and at the age of 27, Mr. Warren rose to great heights in his profession in the case of the State against the Rev. George Washington Carrawan, a Baptist minister of great influence, from Hyde County, owning large tracts of land and a number of slaves. He had killed a school-teacher from Perquimans County named Lassiter, and though Carrawan's slave had aided his master in disposing of the body, his evidence was incompetent and the case was built up solely on circumstances. It was removed to Beaufort County and Messrs. Warren and Carter appeared with the solicitor, Mr. Stevenson, of New Bern, while Messrs. Rodman, Satterthwaite, Donnell, and James W. Bryan defended. Mr. Stevenson placed Mr. Warren in charge of the case, and he accordingly made the last argument to the jury. Judge Bailey presided. It will go down as one of the great criminal trials of America, consuming eight days and becoming famous on account of the arguments and the immediate happenings after the verdict.

When the jury brought in a verdict of murder in the first degree (Carrawan had turned to his wife after Mr. Warren concluded his speech and said, "That speech hangs me"), the prisoner, arising to be sentenced, calmly took a pistol from his pocket, aimed it deliberately at Mr. Warren, and fired. He was attired in the conventional broadcloth of the day, with heavy cardboard in the lapels of his coat. A large gold chain was thrown across his chest, holding a locket hanging just over his heart. The bullet struck the locket, caromed to his lapel, cutting out the cardboard, and, falling to the floor, left him uninjured. The shock knocked him down, but he was quickly on his feet, and in time to see Carrawan draw another pistol and kill himself in the court room. Judge Bailey wrote: "The calmness and poise of Mr. Warren under such a severe ordeal was the most remarkable thing I have ever witnessed." The speeches made by Messrs. Rodman and Warren in that case, outstanding for legal argument and oratorical ability, are published in a work well known to lawyers as Classics of the Bar. The complete history of the trial was written at the time by Mr. Sparrow, who did not appear. There is a copy in the Supreme Court Library, and the few that are still preserved are much sought after.

It was during this period that events began to shape themselves that unerringly pointed to secession. The eighth congressional district at that time was composed of the counties of Beaufort, Craven, Lenoir, Pitt, Greene, Tyrrell, Hyde, Washington, Carteret, Wayne, and Jones. For years it had been overwhelmingly Whig, and its leaders were standing squarely with Webster and Clay. The district was so pro-Union that the opposition to the dominant party was negligible. Mr. Stanly had served three terms in Congress with great ability, but in 1842 had been defeated for reelection. He returned home and was immediately sent to the house of commons from Beaufort County for four terms, was speaker in 1846, and the next year was the attorney general of the State.

In 1848 he was again elected to Congress and served until 1853, Mr. Donnell, at the age of 26, having voluntarily retired after serving one term, and insisting that Mr. Stanly take the Whig nomination. The district had been taking no chance that anyone who subscribed to the South Carolina doctrine should represent it. But with the increased activity of Beecher, Garrison, and Mrs. Stowe in the North, the seeds of disunion were germinating even in conservative and Union-loving North Carolina; and the Democrats, taking advantage of the mistakes of the Fillmore administration, set about to seize the Whig stronghold, the eighth district. Mr. Stanly had previously announced his retirement at the expiration of his term but yielded to the importunities of his party and again became the candidate.

Months before the election the Democrats nominated Thomas Ruffin, of Wayne. Mr. Sparrow, as chairman of the district Whig committee, became the manager of his law partner's campaign and lost no time in launching it. In a ringing appeal to the voters, prepared and signed by him as chairman, along with Col. Edward C. Yellowley, of Pitt, Jones Spencer, of Hyde, and others, he roundly denounced Mr. Ruffin and said that he was already "a warm and open advocate of the right of secession." He warned that the election might be thrown in the House of Representatives and asked, "Who shall cast your vote for President of the United States—Edward Stanly, a Union Whig, or Thomas Ruffin, a locofoco secessionist?"

The appeal to the electorate further continued:

"The abolitionists and Free Soilers at the North and the secessionists of the South are both laboring for directly opposite reasons to destroy the Union. They continue to agitate. They live only by agitation. The compromise measures adopted by the last Congress were regarded by the great and good men, both North and South, as "a settlement, a final settlement of the dangerous and exciting subjects they embraced."

"The abolitionists and secessionists continue to assail these measures. The wise and patriotic policy of our conservative Whig President is bitterly denounced. South Carolina is on the eve of disunion. Finding no other State to join her, she threatens to secede alone. Nullification and secession, odious always and crushed in 1833 by General Jackson, have been revived. If this doctrine is right, then South Carolina is right and our Government is wrong. If Stanly is defeated it will be proclaimed in all the land as a South Carolina victory in Stanly's district, in Union-loving North Carolina."

It was a great campaign. Sparrow, Warren, Carter, and Donnell took the stump for Stanly, all denouncing secession and breathing devotion to the Union. But Ruffin was elected and the Whig power in the district was at last broken. Beaufort County went for Stanly. Mr. Ruffin remained in Congress and went out when the State seceded. He was killed in one of the battles in northern Virginia. In 1853 Mr. Stanly moved to California, where he practiced law. His party, having passed off the scene of action, he allied himself with the rising new Republican Party and was their unsuccessful candidate for Governor of California in 1857. North Carolina was to hear no more of him until five years later.

It was in 1859 that Mr. Warren wrote a powerful article for the New York Tribune, which drew from Horace Greeley a lengthy editorial. At that time Mr. Greeley was saying, "Let them go in peace." It drew the fire of both the rabid abolitionists and the hot-headed secessionists. It was a restatement of the old Clay policies, and pleaded with the sober sense of the North not to make it harder for both southern Whigs and Democrats who loved the Union to keep up their fight. By this time Mr. Warren had formed an intimate friendship with Governor Graham, and they constantly consulted.

After serving as Representative from Beaufort in 1858, Thomas Sparrow moved to Arcola, Ill., where, on account of his ability, a wide field of activity had been promised him, but with the war clouds gathering and feeling then the inevitability of the approaching conflict, he

sorrowfully turned his way home within a year. But the lovers of the Union were not yet giving up. By this time Mr. Rodman was openly advocating secession, was writing prolificly, and making powerful speeches. Carter, Warren, Donnell, and Sparrow were making themselves heard, and wherever one spoke he was greeted with large crowds. Mr. Satterthwaite, living then in Pitt County, was quiet, but his near neighbor, Bryan Grimes, was using his great influence for dissolution. In the winter of 1861 the question of a convention was submitted to the voters of the State. The cotton States had gone out. On every stump in Beaufort County the question was argued. The people were at fever heat, but they were urged to vote down the call. Beaufort County did. And the State did. North Carolina was still in the Union.

But events were happening fast. Lincoln had made his call for troops. Virginia had seceded, and the war was already on. The next election on a convention was held. This time they were all together, all favoring it, and Beaufort County giving it a large majority along with the rest of the State. At the same time Edward J. Warren and William J. Ellison were elected as the county's delegates. Mr. Ellison was a large landowner and engaged in many business pursuits. He also was a Whig and strong Union man, and exerted tremendous influence in the county.

The personnel of the secession convention has been paid due tribute by the historians and writers. Certainly there has never been a greater or abler body of men gathered together in the history of the State, for in the crises North Carolina sent her best. The great county of Pitt sent Bryan Grimes and Fenner B. Satterthwaite, Mr. Grimes reproaching his friend and neighbor, Mr. Satterthwaite, a few days before the convention assembled, because he did not seem to have the same ardor that he did. Martin County sent Asa Biggs, then a United States judge, and one of the State's ablest men. Hyde sent Edward L. Mann. Washington sent William S. Pettigrew. Northampton sent her able judge, David A. Barnes, and John M. Moody. On the vote for president of the convention, Messrs. Warren, Ellison, and Satterthwaite voted for Gov. William A. Graham, who was defeated by the venerable Weldon N. Edwards. Mr. Grimes voted for Edwards. After a few preliminary roll calls as to its form, the ordinance of secession was unanimously passed, the 115 members signing the enrolled parchment. North Carolina had gone out of the Union and then quickly ratified the constitution of the Confederate States.

For the duration of the war, at least, the old antagonists at the bar and in politics made their peace. Mr. Sparrow raised a volunteer company in Beaufort County. While stationed at Portsmouth, awaiting transportation to northern Virginia, he was ordered to take his company to assist in the defense of Fort Hatteras. He was surrendered there with the garrison, and was in a northern prison for six months until exchanged. He was then called to Fort Fisher and was made a major. When that last great fort of the Confederacy fell, he was at home on sick leave. In a small canoe he paddled alone 20 miles down Pamlico River, and never surrendered or took the oath of allegiance.

On May 16, 1861, Mr. Carter was commissioned as captain of Company E, Fourth North Carolina Regiment, and went quickly to the front. At the Battle of Seven Pines, May 31, 1862, his regiment suffered severely, and he himself received wounds that were deemed fatal at the time. It was weeks before he sufficiently recovered to report for duty, and was then assigned as judge of Jackson's corps and made lieutenant colonel. Later he was presiding judge of the Third Army Corps (A. P. Hill's). He remained in the army until he was called home by his election to the legislature.

Mr. Rodman also raised a volunteer company of heavy artillery, which saw service in several sections. Later he was made president of a military court which held sessions in different parts of the South. Mr. Satterthwaite was not in the army, but gave three sons to the cause. Mr. Donnell was in the legislature during the period of the war and was elected to the convention upon the death of Mr. Ellison and also to the convention of 1865.

Immediately after signing the ordinance of secession Mr. Warren was unanimously elected as captain of a cavalry company organized by his friends in the east. A similar company had been organized in another section, and it was decided to only commission one of them. Governor Clark appointed the other man, Mr. Warren always feeling that the governor had been actuated in his decision because they were political opponents. Later, when the entire convention tendered their services to the Confederacy, Mr. Warren was rejected on account of his physical condition. A brother who had remained in New England served in a Massachusetts regiment, while one who came South served in a Georgia Regiment. They faced at Chickamauga, and the southerner was killed.

The brilliant career of Bryan Grimes, who was inseparably connected with the life of Beaufort County, needs no elaboration in these articles.

CHAPTER II

Edward J. Warren and William J. Ellison played important rôles in the convention of 1861 and from the beginning were continuously pointing out the value of eastern Carolina to the future of the Confederacy, condemning the half-hearted efforts for its defense by the Davis government, and urging State action. Both of them actively participated in all of the proceedings and impressed the membership with their ability and courage. During its third session Mr. Ellison died, and Richard S. Donnell was elected to sit with Mr. Warren.

In 1858 Mr. Donnell had made his first legislative bow by serving as senator from Beaufort, and in 1860 he was one of the representatives from the county in the house of commons. He also served in that body at the sessions of 1862, 1864, and 1865, and was speaker both in 1862 and 1864. His great ability and fine legal training made him at once a leading State figure.

Mr. Warren was elected as senator from Beaufort in 1862, 1864, and 1865. In the convention of 1865–66 Messrs. Warren and Donnell were again the delegates from the county; so they served in the dual capacity as members of the convention and as members of the legislature. Mr. Donnell's colleague from Beaufort in the house of 1862 and 1864 was Col. David M. Carter. In both conventions sat Fenner B. Satterthwaite, then living in Pitt, and Jesse R. Stubbs sat in the latter convention from Martin. He was the father of Hon. Harry W. Stubbs, and for many years prior to the war was a representative from Beaufort, but had moved over into Martin. In 1866 he was elected to Congress, but the Thad Stevens régime would not let him be seated.

Mr. Warren was chairman of the judiciary committee during all of his terms in the senate and Mr. Donnell served in the same capacity in the house until he was elected speaker. Certainly no county in those strenuous times occupied a more powerful position in the legislative history of the State than Beaufort. Her senator, representatives, and members of the two conventions wielded tremendous influence, and Warren, Donnell, and Carter were giants in those bodies.

For the time being a new era began in North Carolina when on September 8, 1862, Zebulon B. Vance took the oath of office as governor, and a star of the first magnitude started its ascendency. From that date until his death there was the closest personal and political friendship existing between Governor Vance and Mr. Warren. He soon appointed Mr. Warren as one of his council, and he became a recognized spokesman for the administration in the legislature.

During the progress of the war Governor Graham, Mr. Warren, Richard S. Donnell, Col. David M. Carter, and many others, were at times caustic critics of the Richmond government, and many of the war measures proposed both in the Confederate congress and in the legislature. They insisted upon a "vigorous constitutional war policy," but protested throughout, both in speeches and resolutions, "against any settlement of the struggle which does not secure the entire independence of the Confederate States of America."

The speech of William A. Graham against test oaths, sedition laws, disregard of constitutional guaranties, and the suspension of the writ of habeas corpus was one of the greatest expositions ever delivered in any legislative body on the face of the earth. Mr. Warren followed him in a speech that was widely commended by those who loved constitutional liberty. But they were criticized—Vance, Graham, and Warren—all being subjects of harsh Richmond editorials.

In 1863, when it looked like the railroad would be seized by the Union forces, and when Governor Vance, without avail, had exhausted his patience in urging President Davis to protect it, he was forced to go so far as to threaten to bring back North Carolina troops from Virginia for that purpose. Of course, the Confederacy was harassed, and was, no doubt, exerting every effort, but North Carolina was its backbone and was crying to it in vain for relief.

Debate on the lack of defense for the railroad broke out with fury in the legislature, and Governor Vance was highly commended for his actions. On June 3, 1863, Gen. D. H. Hill reported to the Secretary of War at Richmond:

"Mr. Warren, of Beaufort, one of the governor's council, said in a speech in the legislature that if the enemy got possession of the railroad it would be time for North Carolina to decide to whom her allegiance was due, the United States or the Confederate Government."

Strong language this was, and uttered with the same force by many others, but it caused the railroad to be protected. These men were not only demanding that their State be safeguarded on account of the host she had placed in the field but they were telling the world that in North Carolina constitutional guaranties meant something. The popular conception to-day is against such a conduct of a war, but no war governor in history has ever upheld these sacred rights more than did Zebulon B. Vance. As in later years many of these same men placed their feet on the neck of a tyrant who was usurping the liberties of the people and cast him from office, they were then insisting that orderly processes of government be respected.

Abraham Lincoln never had a more severe critic than Mr. Warren. In his frequent correspondence with his friend, Mr. W. H. Willard, also of Washington, one of the largest merchants and manufacturers in the State, and the father-in-law of Capt. S. A. Ashe, Mr. Warren continually voiced his opinions of Lincoln, condemning him for bringing on a war without the consent of Congress, and excoriating his methods. "It would be odious," said he, "to live under a government presided over by a man who has utter contempt for the Constitution." In another, he called it "Lincoln's war," and in another he said, "You and I did not believe in the right of secession, but I had

no reluctance in voting for the ordinance when I saw Abraham Lincoln ruthlessly trampling the Constitution under foot."

But let us turn back to the home of Donnell, Sparrow, Rodman, Carter, and Warren and see how things were going on. None of them could go back there now, for on March 20, 1862, a week after the capture of New Bern by the Federals, the Twenty-fourth Massachusetts entered Washington, accompanied by a fleet of gunboats. At this time the town had been completely evacuated by the Confederates and no resistance was offered. The regimental band accompanied by several companies marched from the dock to the courthouse and raised the American flag. A banner alleged to have been placed there by citizens was stretched across Main Street, bearing the inscription, "The Union and the Constitution." The Federal commander reported to the War Department that he had found Union sentiments among a few individuals. A garrison, consisting of infantry, cavalry, and artillery, was brought in and made permanent. A large fleet of gunboats was anchored in the river off the town. The occupation was continuous until the spring of 1864.

On September 6, 1862, the Confederates, under General Martin, made an attempt to recapture the town, coming in and taking possession of the western section. The streets were swept by artillery fire, the opposing guns being within a block of each other. Both sides had a large number of killed and wounded. The Confederates retired after an all-day battle, when Union reinforcements came up. It was during this battle that the Union gunboat *Pickett* blew up in the river just in front of the writer's home, killing her captain and 19 of her crew, and wounding 6. The old wreck may be seen to-day. The Union gunboat *Louisiana* shelled the town during this engagement for six hours, not a house in a radius of seven blocks escaping her fire.

When Federal occupation came, there were not over 700 people who remained in Washington, all of them being old people who were noncombatants, and a few children. The feeling was prevalent that the section was being handed over to the tender mercies of the invaders, and that the Richmond government was stripping North Carolina of her manpower for service in Virginia. Hearts less loyal would have utterly failed. The county had always loved the Union, but when the step to leave it was taken, bickerings ceased, and a united front was presented.

On March 30, 1863, the Confederates, under Gen. D. H. Hill, began the siege for the relief of the town. Unfortunately, he had no gunboats, and as a result the Union garrison was constantly relieved. The besieging force consisted of the brigades of Daniel and Pettigrew on the south side of Pamlico River, and the brigade of Garnett, of Pickett's division, upon the north side. The force under General Hill numbered about 9,000. The Confederates seized the forts below the town and held in check a large fleet of Union gunboats attempting to pass them. The Federal garrison in the town at the beginning of the siege numbered 1,500, which was increased to 2,000 when the transports ran the blockade.

The Federals marched overland from New Bern with a force of 8,000 under General Spinola, but were met by Pettigrew at Blounts Creek and driven back. Fearing to make a land assault with its consequent loss of life, the Confederates daily engaged the Union gunboats and forts, and Washington was again riddled with shells. On April 15 a large part of the Confederate forces were called to Virginia, and the siege was abandoned. Washington was to remain under Federal occupation for another year.

The brilliant feat of General Hoke in capturing Plymouth on April 20, 1864, caused General Harland, the Union commander at Washington, to receive an order to evacuate the town. On April 30 the last Federal troops, after firing the different portions of the town, embarked. For the three preceding days the town was given up to sack and pillage. The plundering was not confined to the public stores and supplies but was general and indiscriminate. Gen. I. N. Palmer, who will always be remembered by the citizens of eastern Carolina for his kindness and consideration, as well as for his soldierly qualities at that time commanded the district of North Carolina. He was an honorable foe. In the general orders issued after the evacuation, he thus characterizes these outrages:

"It is also well known that the army vandals did not even respect the charitable institutions, but bursting open the doors of the Masonic and Odd Fellows Lodges, pillaged them both, and hawked about the street the regalia and jewels. It is also well known, too, that both public and private stores were entered and plundered, and that devastation and destruction ruled the hour.

"The commanding general had until this time believed it impossible that any troops in his command could have committed so disgraceful an act as this which now blackens the fair fame of the army of North Carolina. He finds, however, that he was sadly mistaken, and that the ranks are disgraced by men who are not soldiers but thieves and scoundrels, dead to all sense of honor and humanity, for whom no punishment can be too severe."

A board of investigation, presided over by Col. James W. Savage, Twelfth New York Cavalry, scathingly denounced the burning and plundering of the town, and said "there could be no palliation of the utterly lawless and wanton character of the plundering."

The fire burned from Pamlico River clear through to the northern limits, and covered eight solid blocks. The bridge was also fired. Nearly one-half of the town was destroyed by this conflagration. No military necessity required the burning of Washington. It was not necessary to cover the evacuation or to aid the escape of the garrison. No hostile force was then investing the town. A few days later, when the Confederates entered, an accidental fire broke out, and fanned by a high wind almost destroyed the other half. After this baptism the town was desolate and ruined. There were scarcely 500 inhabitants remaining of what had been an enterprising and prosperous community of 3,800 three years before.

No town gave more freely of its men and means and no town suffered more for the cause of the Confederacy.

The foregoing only in a small degree attempts to portray the sufferings of Washington and its people, but is given in order to refute the baseless calumny lodged both during and after the war that there was disloyalty on the part of the citizens of Washington to the Confederate government. It is a slander that is unworthy of denial, and though 65 years have elapsed, history is recorded truths, and there is documentary evidence to give the lie to every false charge.

The hoisting of the banner across Main Street welcoming the invading Federals can be dismissed as an act of a very few cowed and whipped citizens who felt that their government (Confederate) had deserted them. The fact that the banner was even raised by local people is not admitted, for immediately afterwards no one would take the responsibility for it.

On March 30, 1862, with the Federals in undisputed control of the town, six well-known and prominent citizens, all old men, were the guests at dinner of Captain Murray, of the U. S. gunboat *Commodore Hull*, lying in the stream off Washington. Every one of them had either sons or near relatives in the Confederate Army. It was a convivial affair. They pulled off a drunk that evidently required some time for recuperation. Captain Murray proposed a toast:

"Here's to the reconstruction of the Federal Union, a plantation in Georgia with 100 niggers, and a summer residence in North Carolina."

The Washingtonians drank to it with great zest, their liquor at that time having taken the proper effect. It is reported that the captain ordered them oared ashore and safely put to bed. This was a shocking and horrible act of disloyalty.

On April 3, Isaiah Respess, the mayor of Washington, was arrested by a raiding party and sent to Richmond by General Holmes, the Confederate commander, then at Greenville. Mr. Respess was an old man, long past the combatant stage. Faced by a court-martial, with seven charges presented against him, hundreds of miles from home, he successfully combated them and was acquitted. Even then he was held and told that he could not return to eastern Carolina. He was accused of furnishing information to the enemy, or at least fraternizing with them. His arrest, contrary to the civil laws of North Carolina, and with a wanton disregard of his rights, caused an outbreak of widespread indignation. On May 1, Judge Badger, of Wake, arose in the convention and presented lengthy resolutions calling upon Governor Clark to make immediate inquiry and with a demand for his release. Messrs. Badger, Warren, and Graham made powerful speeches. After a debate of three days, the proceedings were terminated with a wire from President Davis announcing the release of Mr. Respess. After the war Mr. Respess was a senator from Beaufort county.

During the first week of May, 1862, Edward Stanly left his California home and was received at the White House by Abraham Lincoln. He was depressed and blue, for his home State, which he loved passionately, had been invaded, and both the place of his birth and that of his long residence were in possession of a conquering army. But he had a dream that his very presence there could bring peace out of distraction, and he painted to Mr. Lincoln a glowing picture.

Was not Washington and New Bern, now held by the Union forces, a former Whig stronghold? Had not their public men, even until the very last, suffered villification on account of their intense love for the Union? Was not this whole war brought on because the people had turned from their old and trusted leaders? What, then, would be easier, now that they were abandoned by the Confederacy, than to go down and wean and coax them back, and take them by the hand as erring brothers? And who, he argued with Lincoln, could better do this than Mr. Stanly himself?

It was no lust for office or for power that inspired Edward Stanly. Love for his old home, and for the Union, pervaded every fiber of his being. He knew also that there was suffering down in North Carolina, and he thought he could alleviate it. He pictured himself as a fearless knight on a mission of chivalry. Mr. Lincoln was impressed. He felt that if he could drive a wedge into North Carolina that the war would quickly end. Just as he did not consult Congress when he made war neither would be consult that body now, and on May 26, 1862, he commissioned Edward Stanly as Provisional Governor of North Carolina, with the rank of brigadier general.

Governor Stanly lost no time. He arrived shortly in New Bern, and spent a month conferring with General Burnside. He unfolded his plan. Idealism was to prevail. The military should play second fiddle, and there should be a minimum of restraint. In all of their

acts they should play the part of the gentleman. They should fraternize freely with the citizens. No one should be called a rebel. The people should be told that they were simply misled, and that the Union was ready to receive them with open arms, and restore their property, including their slaves. This program had not been in effect 3 days before it clashed with the views of the Union general, and in 10 days Stanly was complaining to Lincoln of the excesses of the Federal troops.

He then moved on to Washington, and set up his headquarters in the building occupied by the branch bank of Cape Fear. Mr. Stanly was a persistent, tenacious, and determined man. He forcibly presented his ideas and arguments to all he came in contact with, and there is no denying the fact that he made inroads on the morale of the comparatively few people remaining in Washington. He was received kindly in the town which was formerly the scene of his many triumphs, and his presence no doubt softened the occupation. He wrote letters to many of his old Whig friends in the convention and legislature, including Graham, Badger, and Warren; but they had crossed the Rubicon long before, and sent him word that his mission was futile. Some time later he was issuing a public appeal to all of the State, advocating the election of Vance, and saying it meant a return to the Union. But it seems that he did not know Vance.

While Governor Stanly was busying himself to take North Carolina out of the Confederacy, and was holding a mock election to send his secretary as a Member of the United States Congress, the activities of his brother Alfred Stanly, who lived 3 miles from Washington, were giving both him and the Union garrison much concern. If Edward Stanly loved the Union, Alfred Stanly hated it. If Edward Stanly was the embodiment of national loyalty, Alfred Stanly, as a secessionist, surpassed it. He adored the Confederacy and hated "damn Yankees." He had tried to enlist, but was rejected on account of his age. So he became a bushwhacker de luxe, and his favorite occupation was to snipe at anyone wearing a blue uniform, as raiding parties would pass his house. It is known that he wounded several. It is said that he killed some. He thrilled when he was denouncing his brother's rule. One day a squad went out and burned his plantation, but the old man always remained an irreconcilable.

Governor Stanly carried on a lengthy correspondence with Lincoln. He constantly protested the thwarting and overruling of his policies by the Army, and was always mentioning the excesses of the troops, and complaining of their entire lack of cooperation with him. Soon Stevens and Sumner, on the floor of Congress, were interrogating the President, as to "this man Stanly who is assuming to usurp the powers of the military."

The provisional governor had accomplished nothing. Each day his disillusionment grew, and he was sad. On March 2, 1863, he resigned, no doubt upon the suggestion of Lincoln. He returned to California, entering into a large law practice, and was eminently successful. He died in 1872, at the age of 62, and was buried there. Edward Stanly was a great lawyer, and a wise statesman. He never lost his love and deep affection for the people of his native State. At least one of the votes for the acquittal of Andrew Johnson is accredited to his influence.

The banner incident, the social party of several old men on a Union gunboat, the arrest of Mayor Respess, and the visit of Stanly were all magnified, and mutterings were abroad that Washington was disloyal to the Confederacy. The truth is that the town and county were bled white, both of men and property, and the people displayed the stoicism of Spartans, and bore their sufferings heroically.

CHAPTER III

The war was now over, and William W. Holden was the provisional governor. North Carolina was to drink the bitter dregs for years to come. Governor Holden immediately set about to restore the State government, making a conscientious effort for the immediate return of the State to the Union, and appointing men of high character to fill all of the offices until the legislature could meet in the fall. The dream of his life was to be elected governor by the people. As judge of the second judicial district, he named Edward J. Warren, and appointed Daniel G. Fowle, also a native of Washington, and later to become governor, as the judge from the Wake district.

While no interest was taken, there was no objection to the call for a convention in 1865. Its personnel was selected solely by white votes, and many able figures were members. It was composed largely of men who were former Whigs, and it was imbued with a spirit of cooperation, and a desire to set the house in order again. Judge Edwin G. Reade, a former senator in the Confederate Congress, was its president. Judge Warren and Mr. Donnell, as members from Beaufort, rendered able service on account of their wide experience, Mr. Warren being appointed on the committee to redraft the constitution.

The legislature met the latter part of November, Governor Holden having submitted his cause to the voters, and being defeated by Jonathan Worth. On November 29, Gen. U. S. Grant visited the senate chamber of North Carolina, and was introduced to the body by Judge Warren. General Grant was there under instructions from Andrew Johnson, with whose policy at that time he was in hearty accord. The commander of the United States Army was most gracious, and in conversation did not hesitate to express his views and his opinion that as soon as an election could be held that North Carolina would be represented in the National Congress.

S. F. Phillips, Richard S. Donnell, Judge Warren, and Colonel Yellowley had a private talk with the general lasting over an hour, which, Mr. Donnell stated, "ought to be productive of excellent results, as we were impressed with the broad views of General Grant and believe that in his attitude toward General Lee at the surrender he has already shown us that he will be a friend of the South."

Little did they dream at that time that lust for office would cause General Grant to adopt a policy a few years later that placed North Carolina and other Southern States under an iron heel that no conqueror had ever before been guilty of.

The legislature immediately went about to set up a stable government under the Constitution. On December 1 Judge Warren, by joint ballot of the legislature, was elected judge of the second district, receiving 89 votes to 68 for George Howard. The district at that time was composed of the counties of Beaufort, Pitt, Edgecombe, Martin, Washington, and Tyrrell. He resigned as a member of the senate on December 18, and Col. David M. Carter was elected to succeed him. No member was more active or more prominent stand in the senate than Colonel Carter during this unexpired term. At the same time Mr. Warren was elected judge, Judge Fowle, of Wake, also received his election.

Just before Holden went out of office he appointed B. F. Moore, Richard S. Donnell, and William S. Mason as commissioners to prepare and report to the legislature a system of laws upon the subject of freedmen. This report was adopted by the legislature, the other two members saying that Donnell was entitled to the major credit for the work.

The work of the convention of 1865–66 was finally approved by a vote of 63 to 30, Messrs. Warren, George Howard, and Thomas J. Jarvis being numbered among those opposing it. When it was submitted to the people Judge Warren gave a dignified statement containing his reasons for opposition. It was rejected both in Beaufort County and the State, and with exception of the ordinances it had adopted, the work of the convention was in vain.

Worth was now governor and with the beginning of 1866 Judge Warren entered upon his judicial career with a sense of relief from party politics and the storms of the day. During the latter part of the War the courts had ceased to function and he found that practically his whole time was occupied. During his few vacant weeks he would return to Raleigh and participate as a member of the convention. As judge, he covered every section of the State, evincing a keen and active interest in his work. He had cared nothing for politics and the bench was the only honor that had really appealed to him. The late Judge Henry G. Connor stated that he well remembered the first court held in Wilson and how he was struck with his manner and deep logic and innate sense of justice. In Orange County he clashed with the Ku-Klux, who were interested in seeing a negro executed, only to discover that they were accusing the wrong man. But it was in the equity and law courts where he excelled, and there is frequent commendation of his decisions in the opinions of the supreme court. "He was the model nisi prius judge of his day," said Judge William A. Moore, a political opponent. He served on the bench until July 1, 1868, being defeated by Edmund W. Jones in an election where almost the entire vote against him came from negroes.

On June 3, 1867, Richard S. Donnell died from an incurable malady. He was only 47 years of age, but in that brief span there was crowded a life of service for North Carolina. His body was carried to his native New Bern and laid beside his father, Judge John R. Donnell, who added luster to the superior court bench of the State for 18 years.

Political readjustments were now beginning to take place, and men were casting about for the future. Until now Mr. Rodman was quiet, as were all of the old secessionists. General Grimes, with the glamor of a great military record, was in seclusion in Raleigh, and Matt W. Ransom had retired to his large estates on the banks of the Roanoke in Northhampton. In spite of the efforts of Holden and Worth, the State was not yet in the Union, though over two years had elapsed. Mr. Rodman began conversations with both his friends and those of former hostile political beliefs. One of his first meetings was with Judge Warren, Colonel Carter, Major Sparrow, and Mr. Satterthwaite, the latter having moved into Beaufort. When the first call for a convention had been voted down in the county in 1861, and Mr. Warren and Mr. Rodman had debated the question out in every section, a feeling of antagonism had sprung up between them, but now that the struggle was over they had a mutual respect for each other that lasted for life. All of these men sat around the table to discuss the tragic plight of the State.

Congress had submitted the fourteenth amendment, and Mr. Rodman saw only gloom ahead. He vividly pictured the horrors of negro domination in the South, and lamented the fact that already mercenaries, camp followers, and unprincipled carpetbaggers were infesting the

State. "Are we to let North Carolina become a prey to these people, and lead the ignorant blacks," he asked, "or shall men like us, who hold the State near and dear, step in and lead and assume control."

It was not a matter to be lightly brushed aside. Although the State government under Worth was functioning splendidly, a military despotism under the acts of Congress had been set up and the civil authorities were being constantly overruled and humiliated. Mr. Rodman felt that the only way either the State or the South could be helped was a submission to the new order and an assertion of leadership by representative men. It might be easy to criticize and speculate after the lapsing of nearly three-quarters of a century, but these were critical times and a man's motives should be judged by his accomplishments under the conditions that confronted him.

Colonel Carter, who carried to his death terrible wounds he had received on the field of battle, became after Gettysburg and Vicksburg an ardent advocate of peace at almost any price. In January, 1865, he was a member of a secret legislative committee that urged upon President Davis to make terms. He listened to Mr. Rodman with great sympathy, and it is certain that he left Mr. Rodman under the impression that he subscribed to his views. Later in the year, when the Republican Party was organized in the State, although Colonel Carter did not attend he was named as a member of its executive committee. In about a month he disavowed it and announced that he was a conservative. In a later campaign this incident was to hurt Colonel Carter politically. Major Sparrow and Mr. Satterthwaite could see no advantage in such an alliance as proposed by Mr. Rodman.

Judge Warren, by reason of his New England birth and his former pronounced Whig views, was expected to listen. He had cordially hated the ante bellum democracy, and a promise of leadership was held out to him in the new order by Judges Reade and Settle. Even after he had been defeated for judge, it was represented to him that Judge Starbuck would accept a Federal position, and if he would move to Salem he would be named his successor, and would be given the first vacancy on the supreme court. But Judge Warren, now a man without a party, would not listen. So, from the beginning of the war, he called himself a Conservative, for the word "Democrat" was still an anathema to him. And Colonel Carter, Major Sparrow, and Mr. Satterthwaite also adopted that title, for just now they could not stomach to affiliate with a party they had always detested.

So Mr. Rodman attended the first Republican convention in Raleigh and cast his lot with that party. From the outset he was the leader of the conservative, or white wing, in striking contrast with Judge Reade, who went with the radical element. Never did Mr. Rodman countenance negro domination or negro office holding, and to his influence, more than anyone else, is attributed the fact that Beaufort in years to come never suffered negro control, as so many of her neighbors did. With the exception of a few aldermen in Washington and a few school committeemen in the county that horror was spared. From that moment William B. Rodman exerted a far-reaching influence on the constitutional and judicial history of North Carolina.

But Congress had decreed that the "conquered Province" must have a new constitution, and General Canby, the military commander, initiated the enrollment of the negroes for their first suffrage. Another great convention was held in Raleigh, this time composed of the Conservatives and Democrats. They denounced the determination for a Constitutional Convention and banded themselves to oppose it. Judge Warren wrote Governor Vance, and Judge Fowle, who had resigned, that his attendance would be incompatible with judicial propriety, but that he was in complete sympathy with their movement.

The election was held, and as expected, the call for the convention carried. William B. Rodman and William Stilley were elected as members from Beaufort. Such a conglomeration of constitution makers had never before been gathered. Carpetbaggers, negroes, illiterate whites with deep-seated prejudices, and about 15 high-class men made up the assemblage. In the latter class, besides Mr. Rodman, were Plato Durham, of Cleveland, John W. Graham, and E. M. Holt, of Orange, the last three having no influence, but making memorable fights on all controverted questions. There was a dearth of lawyers in the body. It is paying no compliment to William Blount Rodman to say that he towered above everyone there. He would have been a distinguished leader in any convention or legislative body, where his legal ability and forensic powers would have been in demand. When the convention organized he must have shuddered at the colossal task confronting him, for he had fully determined to battle every question and save the State, if possible, from those who were ready to despoil her. As a former Confederate soldier, with his disabilities still unremoved, and as a former well-known Democrat, he was looked upon with suspicion by the negroes and carpetbag element. That section of the convention immediately set up as their leader the notorious but able Albion W. Tourgee.

Mr. Rodman was immediately appointed as one of the committee of 17 to report on the best mode of proceeding to frame the constitution and civil government. He was then made chairman of the committee on the judicial department, and it was here he best served North Carolina. From the first meeting of this committee he was in constant clash with Tourgee, and they waged a memorable battle both in committee and on the floor of the convention over the judicial article. Mr. Rodman was strongly opposed to the election of judges, and desired to retain the old distinction between actions at law and suits in equity. Tourgee took the opposite view on both questions, and by close votes his opinions prevailed. Mr. Rodman then gracefully yielded, and thereafter wrote all of article 4 of the constitution.

Surveying his handiwork he predicted "it will stand the test of experience and be more valued with every year of its existence." Mr. Rodman was also the author of sections 22, 27, 35, 37, and a part of 32 of the bill of rights. He wrote section 3, of article 5, on revenue and taxation, which in recent years has been amended. Mr. Rodman made a long fight in the convention to strike out section 21 of the bill of rights, which provided that the privileges of the writ of habeas corpus shall not be suspended. He desired the writ suspended during war, insurrection, or invasion, but his proposition was overwhelmingly defeated. The late Judge George H. Brown considered that Mr. Rodman's most valuable contribution to the constitution was the fight he waged to preserve the equation between the property and poll tax, as the State was then financially prostrated.

When article 11 was under discussion, dealing with punishments, penal institutions, etc., Mr. Rodman riddled the committee's proposals with amendments, all of which were adopted. But outside of his work in writing the judicial sections, his most conspicuous effort was on the suffrage article, where he successfully combated the wild and incendiary views of men like Abbott, Tourgee, and Edmund W. Jones, who believed in social equality. Looking backward, it is a wonder that the convention did not proscribe every prominent man in the State, so great was the animosity then prevailing. Mr. Rodman, though having the confidence of the presiding officer from the first day of the session, and being thus favored by committee appointments, had to fight his way to leadership, and long before adjournment he was the recognized spokesman of the body.

The convention unanimously made Mr. Rodman one of the three commissioners to prepare a code of laws, and his work became a model for future codes. He was also appointed as one of two members of the convention to prepare an address to the people urging them to adopt the constitution.

The constitution was adopted by a large majority, Beaufort joining the other counties in favoring it. It is rather singular to note that Mr. Rodman, who wrote more sections of the constitution than any other man in the convention was not permitted to vote to ratify it, though in the same election he was elected to membership on the supreme court. Judge Warren, Major Sparrow, Colonel Carter, and Mr. Satterthwaite all issued fervent appeals to the people to reject it, but neither could they vote on the question. The disabilities of all of them were removed shortly after the election. It is also worth noting that the proposition to increase the membership of the supreme court from three to five was only carried in the convention by a majority of one. Had this not prevailed, it is hard to speculate what three would have composed the court.

The constitution of 1868, the organic law of the State to-day, conceived and born in prejudice and strife, and prepared by a convention, the overwhelmingly majority of which was hostile to North Carolina, has, notwithstanding its conception, stood the test. Recent conventions in many Northern States had afforded a chart. The fact that it was written by a mere handful of its membership is probably responsible for its lack of commissions and omissions. An abler body might have been hopelessly divided on fundamentals. In reviewing its birth it is to be wondered that such a document emerged. That it has passed through the decades with slight mutilation is surprising, and it is doubtful that the tinkering with it by amendment has very greatly improved it.

Defeated for reelection Judge Warren again actively entered the practice of law and formed a partnership with Col. David M. Carter. Several years later William B. Rodman Myers, the son-in-law of Judge Warren, was admitted to the firm. They had all the practice they could attend to and appeared in most of the far eastern courts.

The election, along with the adoption of the constitution, was a clean sweep for the Republican candidates and every branch of the State government came under their control. Holden became governor in his own right, while a supreme court was chosen composed of Pearson as chief justice and Reade, Rodman, Dick, and Settle as associate justices. In spite of the urge to engage in partisan politics, to which they freely yielded, no greater body has ever sat as the State's highest tribunal than this supreme court of the reconstruction era. All of them were native North Carolinians of distinguished ancestry, and men of character and the highest order of ability. It was the brightest spot in that sordid period and the surest hope of justice from an inferior, partisan, and at times corrupt superior-court judiciary. The opinion of Chief Justice Pearson in the habeas corpus cases was cited by the Democrats as an example of utter collapse of constitutional government, and coming as it did it staggered the sober thought of the State. Reviewing it to-day, however, aside from the shaken faith in our institutions, we must admit that had the writs been attempted to be enforced a stream of blood would have flowed in North Carolina from Alamance and Caswell to the Atlantic Ocean.

Judge Rodman, a member of this great court for 10 years, contributed in marked degree to its record. By virtue of having been a

member of the convention that framed the constitution, he at once became its chief interpreter and expounder. It is interesting to observe the points of difference between the members of the court on constitutional questions and to contrast the views of Rodman, as a framer, with the other members. From the beginning there were divergent views on the part of Rodman on the one hand and his associates on the other as to the proper interpretation and construction of the article on homesteads, and they remained so until subsequent legislatures clarified enabling acts.

Before the question ever reached the court Judge Rodman in an able treatise had discussed the duty of the court should the legislature disregard the equation between property and polls and in subsequent opinions down to a late date this dictum has been referred to. In 1870, when the Republican legislature desired to extend their term beyond the biennium, by reason of a strained construction of the constitution, they passed a resolution asking for an opinion from the supreme court. Chief Justice Pearson and Justice Dick responded as "a duty of courtesy and respect," while Justices Rodman, Reade, and Settle declined. Judge Rodman went further than an outright declination and stated that if they wished merely his individual opinion, he would feel at liberty to give it, and then rather ingeniously pointed out the controverted sections, and ended by saying that if there was any doubt in the minds of the legislature that "a wise and becoming policy would require you to give the people the benefit of the doubt." The attempt by the carpet-bag legislature to perpetuate itself in office proved abortive. It should be mentioned that the supreme court in recent years has rendered opinions upon the request of the general assembly.

None of the writs of habeas corpus in the Holden-Kirk affair were issued by Judge Rodman. This was probably due to the fact that the Supreme Court was in recess, and that he lived in a section of the State far removed from the scene of trouble. There is no doubt, though, that all of the members of the court concurred in the opinion of Judge Pearson on that subject.

No attempt is made here to analyze or set out some of the outstanding opinions of Judge Rodman while a member of the court, which covered almost every subject of constitutional and statute law. They are his memorial and are cited to-day for their lucidity and logic.

CHAPTER IV

It was the November term, 1868, of the superior court of Beaufort County, the first court to be held under the new constitution. John H. Small, a large farmer and business man, had been sworn in as foreman of the grand jury. Several members of this grand inquest were negroes.

"Mr. Foreman and gentlemen," piped the judge, "the people have declared that there shall be a new order in North Carolina, and that men who despise disloyalty shall be in control. Thank God we are back in the glorious Union again. The man who crushed the rebellion has just been put in office, and he with our help is going to run this country. I am glad to see on this grand jury to-day some of our newly liberated colored brothers, and I first charge you to see that their political and property rights are protected."

There then followed a harangue of an hour, interspersed with frequent profanity and occasional garbled quotations from the Bible. Mr. Small, one of that New England migration to eastern Carolina in the early forties, blushed for shame.

The occupant of the bench did not participate in the war. He was the delegate from both Washington and Tyrrell in the convention of 1868. While possessed of a law license, he had rarely appeared in a courthouse. He was tall, slim, and rawboned, with inanimate features and a glassy stare in his eyes. He wore a long frock coat, an extra tall silk hat, and presented an immaculate appearance. He walked almost on his toes, which caused his body to sway from side to side. He strutted like a peacock. He was a confirmed drunkard, a bitter partisan, thoroughly unscrupulous, without character or morals, and corrupt and debase. While lacking any knowledge of law, he later became as fiendish as a Jeffreys.

"Your honor," said Mr. Sparrow, "the wife of the defendant, Isaac Barrow, died last night. I ask that the case be continued to the spring term, the solicitor being quite willing."

"The motion is denied," snapped the court.

He got supreme satisfaction by being addressed as "his honor" by men like Sparrow, Warren, Satterthwaite, and Carter.

The judge was Edmund W. Jones, of the county of Washington, but already known far and wide as "Jay Bird" Jones (a name given him by Josiah Turner), and by the grace of a large negro majority presiding over the superior courts of North Carolina. At the solicitor's table sat Joseph J. Martin, of Martin. He was an honorable gentleman and held in high esteem.

After a few preliminaries, a recess was taken, and Judge Jones promptly headed for a popular bar.

That afternoon Capt. J. J. Laughinghouse, who lived just over the line in Pitt County, entered a plea of guilty to an assault on the sheriff. The judge imposed a fine of $50, and then malignantly asked the captain what he had to say. Captain Laughinghouse, with the fire and vigor that was his for life, expressed his contempt for the court in language and oaths that made the air blue. The darkness of a winter evening was beginning to fall, and this was the last matter to be disposed of. In addition to the fine Judge Jones sentenced him to jail for 30 days, immediately adjourned court, and was spirited to a house on the outskirts of town.

Captain Laughinghouse had to serve all of his sentence. The ladies of Washington decorated his cell so as to hide the bars, a feather bed was moved in, the choicest food was brought in daily from their tables, and the captain in later years admitted that so great was his satisfaction in paying his respects to the judge, and so pleasant had his imprisonment been made, that he hated to see his term expire.

On Wednesday morning of the same term of court there was called the case of State *v.* Jim Carter. The courthouse was packed to overflowing. Jim was a former slave of Col. David M. Carter and had accompanied him to war. When Colonel Carter had been left for dead on the battle field it was Jim who had found him and carried him on his back to a place of safety and nursed him back to life. In the recent election Jim had voted the Conservative or Democratic ticket, and had ostracized himself with the colored population. He was finally attacked on Main Street by several of them with the result that Jim wielded his knife with great dexterity and stabbed one to death. So he was to be tried for murder, and his former master, a ferocious old lion, sat by his side. For weeks before the trial the whole county had become either pro or anti Jim Carter, and the case had assumed a political aspect in that the Democrats were for acquittal and the Republicans for conviction. Over 200 Democrats sat in that courthouse with pistols in their pockets.

On a question of admissibility of some phase of the evidence Colonel Carter received a severe reprimand from the court for insisting upon the constitutional rights of his client and was ordered to apologize.

He thereupon straightened up and informed his honor that while it was true he was conducting a hearing where the State was seeking to take a man's life, that in no sense of the word could this be termed either a trial or a court; that by his actions the occupant of the chair had already shown he was lacking in any knowledge of the law and was devoid of any semblance of character or morals; that it was painful for him as a lawyer to address such a tribunal; that his conduct was only typical of what could be expected hereafter on the superior court bench; that the evidence sought to be offered by the defendant was competent and would be admitted regardless of the opinion of the court, and that so far as any apology was concerned he would sink lower than the mudsills of hell before he retracted anything. Standing 6 feet from the judge he folded his arms and glared.

It was a full five minutes of painful silence before a word was spoken, and Colonel Carter was then told to proceed with the examination of the witness. The evidence attempted to be barred was presented in full to the mixed jury of whites and blacks.

The news had reached the judge, who was visibly under the influence of whisky, that he would be held to strict account for the jury's verdict and that pistols would bark out at him in the event of conviction. The opening of court that morning had been delayed an hour, due to the absence of his honor, who had finally been found at the home of a negro prostitute, where he had spent the night. Blear-eyed, trembling, his bloodless face without expression, he realized that his judicial orders issued at times with merciless severity were without avail, even though surrounded by court officers of his own political party. During the three minutes the jury was out it was a tense scene in the courtroom. The judge squirmed and twisted in his chair and every eye was on him. The silence was broken when a tiny crack of the jury room door was opened and a little bullet-headed negro squeaked out, "Not guilty." The crowd was content in not hearing an acquittal in the impressive court form and bedlam reigned as they rushed in the street. That night Washington staged a celebration.

The gentle and erudite Dr. David T. Tayloe, a gentleman, scholar, and learned physician, who had served four years in the Confederate Army, looked in on the proceedings and became a militant. Doctor Tayloe was a former Whig leader, and a campaign song composed by him had been adopted by the Zachary Taylor campaign and was used throughout the Nation. He was asking himself what it availed a man in former days to have been a friend of the Union.

Dr. Charles J. O'Hagan came down from Pitt to observe the workings of the Jones court, and was a calm but embittered spectator. He had recently made the sacrifice as the nominee for Congress and had been defeated. North Carolina will never see his like again. Born in Ireland, he had a passion for freedom and individual liberty. He had a national reputation as a physician, and after a distinguished service in the Army, did as much as any man to redeem his State. Although a small boy when he died, well does the writer remember him. He was both his father's and grandfather's lifelong and devoted friend. Truly, he was one of the State's great men.

At the fall term, 1870, Judge Jones presiding, H. E. Stilley, a member of the legislature, and colonel of Holden's Beaufort County Militia, made an unwarranted attack in a statement to the judge on Dr. John McDonald, who was sitting in the courthouse. Judge Jones, without investigation, castigated the doctor in stinging language. The fiery and temperamental physician jumped up in court, knocked Colonel Stilley down and threw him out of the courthouse. He was adjudged in contempt, fined $100, and placed under a peace bond. When court

adjourned, Doctor McDonald accosted the judge, grabbed him by the collar, and shook his hat off his head.

Carpetbag and scalawag justice was being meted out with a vengeance in the superior courts of the State.

Judge Jones was continually reversed by the supreme court, this happening eleven out of twelve times in one report. The bar of Washington carried up on appeal every case he tried, Colonel Carter doing so with great glee.

After Holden was impeached, the house passed articles of impeachment of Judge Jones, but he was permitted to resign without trial. He returned to Plymouth and became more dissolute than ever, his friends and companions being chiefly negroes. One day he was at a fishery on the shores of Albemarle Sound, where large catches of herrings were being thrown in boxes on the sand. He reeled over with a stroke, falling among the dying fish. They carried him home and he passed away that night. It is said that not a single white person attended his funeral.

In the old man's latter days, he strangely took up the idea that he wished to learn to sing. These were the days of old-fashioned singing schools. There is hardly anyone left now who remembers the geography singing classes that made for such wonderful efficiency in the memory of geographical points and facts, but many now living remember the Carmina Sacra Classes that gave such delightful entertainment and made congregational singing very tolerable in the absence of a church organ. There was one of such classes going on in Plymouth, having the usual number of members and giving great entertainment.

"Jay Bird" joined and persisted in going vigorously into his work, entering early and staying late, and singing loud and strong. His notes and tones, according to report, were equal to old man Linkhaw's, of Roberson County, reported in the Sixty-ninth North Carolina Report, page 214. The difference was that Jay Bird's produced merriment and fun while Linkhaw's actually prevented religious worship. The judge had one of those voices that are not usual. A bass note like that of a bull frog was followed immediately by one sounding like a carpenter filing his saw. One day when he had broken up the class with laughter, he saw the awkwardness of his situation, and when the laughter ceased he delivered himself of this proposition:

"A slavish adherence to the notes destroys the symmetry of music."

It is not reported that the old gentleman's voice acquired much skill for melody, nor what effect his efforts in that direction had on his private entertainment, but it would probably be admitted that his musical philosophy was sound, and expressed more wit than his mind was usually capable of.

On April 19, 1869, an article appeared in the columns of the Raleigh Sentinel headed: "A Solemn Protest of the Bar of North Carolina Against Judicial Interference in Political Affairs." This unusual document was caused by the late public demonstrations of political partisanship by the judges of the supreme court, and was aimed especially at Judge Reade, who had admitted the authorship of a shocking document signed by the Republican members of the "carpetbag" legislature in an address to the people of the State.

After reciting the exhibitions of mad partisanship by the judiciary, the article closed with this:

"Unwilling that our silence should be construed into an indifference to the humiliating spectacle now passing around us; influenced solely by a love and veneration for the past purity, which has distinguished the administration of the law in our State, and animated by the hope that the voice of the bar of North Carolina will not be powerless to avert the pernicious example, which we have denounced, and to repress its contagious influence, we have under a sense of solemn duty subscribed and published this paper."

It was signed by 110 members of the bar of the State, and was prepared by B. F. Moore, E. G. Haywood, and Asa Biggs. Judge Warren was in Raleigh at the time of its preparation and was the third one to sign it. Major Sparrow and Mr. Satterthwaite also signed.

When the supreme court met in June, it first ascertained how many of the signers practiced in that court, which proved to be 25. An order was then issued that these 25, one of whom was Judge Warren, should be "disabled from hereafter appearing as attorneys and counsellors in the court, unless they shall severally appear on Tuesday, June 15, 1869, and show cause to the contrary." The rule was discharged as to the others. The court held that the rule could be discharged as to the 25 on their making "a disavowal upon oath of any intention in signing and publishing said paper to commit a contempt of the supreme court or to impair the respect due its authority."

From time to time different ones would file answers to purge themselves of contempt, but no answer was ever filed by Judge Warren, Vance, Jarvis, and a few others. The matter was allowed to drop.

In the early part of 1870 President Grant appointed Col. S. T. Carrow, the sheriff of Beaufort County, as United States marshal of North Carolina. He was 6 feet tall, with a massive frame. He had no educational advantages, but was endowed with a strong personality and was powerful in political debate. He had joined the Republican Party and became sheriff. As such it was his duty to collect the odious special taxes assessed by the "carpetbag" legislature, and his great heart and charitable instincts caused him to pay out of his own pocket taxes for literally hundreds of people. He exerted great political influence and had a most salutary effect on the negroes, who were afraid of him. The office of United States marshal was one of the richest political plums in the State, and the fees were large. Colonel Carrow surrounded himself with fine horses and carriages, dressed fashionably, entertained lavishly, and was again profuse with his charity, his political friends and foes being recipients.

After the humiliating opinion of Chief Justice Pearson declaring the power of the judiciary exhausted, it was he who served the writs of habeas corpus issued by Judge Brooks in the United States court and took in charge the prisoners of the Holden-Kirk war, which later resulted in the impeachment of the governor. They rejoiced in being in Colonel Carrow's custody, and many of them wrote him letters speaking highly of the consideration and courtesy shown them.

The spring of 1870 had rolled around, and the State was so shocked at the program of pillage and plunder inaugurated by the carpetbag legislature that it was literally on fire. On June 4 there assembled in the Beaufort County courthouse one of the largest and greatest political conventions held in the East. It was composed of old-line Whigs, Democrats, and many Republicans who were already leaving that party. It was called the "Conservative Democratic convention," and a full county ticket was quickly unanimously nominated. It proposed for the senate Judge Edward J. Warren and for the house Maj. Thomas Sparrow. Enthusiasm was rampant, for regardless of past differences, the delegates were now united for a single purpose.

The Eastern Intelligencer, published in Washington and edited by Dr. James F. Long, a quite able paper carrying as its slogan, "Death to radicalism," tells about it in its issue of June 8:

"When the name of Judge Warren was announced there were loud cries for him, for the people wanted to hear from him, as it was uncertain whether he would accept the nomination. It was feared his known physical infirmities would force him to decline. He soon made his appearance, and though hobbling and moving with great difficulty, he in about an hour's speech convinced the crowded court room that though rheumatism might to some extent have impaired his physical energies the profound logical mind, the brilliant, clear, perceptive, progressive intellect of Warren was still there stronger than ever, brighter than ever, as full of fire as in the days of yore, and the tongue lacked none of its native eloquence. We will not attempt an analysis of his address. Sufficient that he gave radicalism and its failures an exposé, every word of which was a nail in the right place, driven and clinched by the master of builders."

Of Major Sparrow it said:

"Sparrow, the servant of the county, the popular man of the county, whom the people love (and he merits it, because all of his life he has been making personal sacrifices—pecuniary and professional—to serve them), was next called. In his own unborrowed style he entertained them with choice morceaux of political viands that made their mouth water with anticipation of what the full feast of radical exposures would be when, uncoated and with sleeves rolled up, he will open the campaign."

Satterthwaite, it said, excelled his past efforts as an orator, and Colonel Carter, after presenting the resolutions of the convention, confined his remarks to giving "some wise advice to the colored people conducive to their future happiness and prosperity."

The campaign was fiercely conducted, but the ticket was elected by a large majority, and Beaufort County again sent two of her sons to Raleigh to figure prominently once more in history about to be made.

CHAPTER V

The legislature of redemption met in November, 1870. For another time the chairmanships of the judiciary committee in both senate and house went to Beaufort County. The Conservatives or Democrats had a wide majority in each body, and they immediately set about to undo what the despoilers had been doing for the last two years. They elected Thomas J. Jarvis, then of Tyrrell, and later to become governor, as speaker of the house.

On December 15, 1870, Maj. Thomas Sparrow, of Beaufort, appeared at the bar of the Senate and impeached Gov. W. W. Holden, in the name of all of the people of the State. By reason of his commanding influence, his purity of character, and outstanding legal ability, he had been chosen as chairman of the board of managers. Lieutenant Governor Caldwell retired to assume charge of the executive department, and Judge Warren was immediately elected as President pro tempore of the Senate.

The trial proper of Governor Holden, with Chief Justice Pearson presiding, began on January 23, 1871. He was arraigned on eight articles for high crimes and misdemeanors, based on a gross usurpation of the duties of his office, the countenancing and encouraging of the suspension of the writ of habeas corpus, and a general overriding of the constitutional rights of the citizens of the State. It was quite natural that the managers should select as their chief counsel that sturdy patriot, William A. Graham. The vicissitudes of politics had made this former United States Whig Senator and governor and outstanding advocate of the Union, the chart for patriots to follow. Governor Holden was represented by counsel of the highest ability, picked from both parties.

On February 2 Major Sparrow made the opening argument to the senate, sitting as a court of impeachment. He succinctly pointed out the path to be followed, and his speech without a taint of demagoguery, and abounding in logic and legal argument, set a high-water mark for one of the greatest of State trials. And how different it was from another august body that had met a few years before to degrade a President who refused to bend to unscrupulous partisans. In that, they would have ousted a President who obeyed the Constitution, while in this, they were bringing to justice a governor who had openly flaunted it.

Major Sparrow began:

"The spectacle exhibited in this senate chamber to-day is without precedent in the annals of our country. It is the arraignment of the chief executive officer of a State, by the people of a State, through the representatives of the people, at the bar of the senate, for crimes and misdemeanors in office. It is an accusation preferred by the people of North Carolina against the Governor of North Carolina for an alleged invasion of their rights as secured to them by the Constitution and laws of the land, and the subversion of their liberties. It is a charge preferred by the people that he, who was exalted by their suffrages to the highest office within their gift, to be a terror to evildoers, has himself become a doer of evil—that he who was sworn to support and maintain the law has become himself a violator of the law—that he whose sworn duty it was to protect the innocent and punish the guilty has made instruments of the wicked and disorderly to punish the innocent and unoffending, verifying in his person the scripture maxim, 'When the wicked are in authority the people mourn.'

"Those who may imagine that this impeachment of the governor is an attempt of a successful political party, in the flush of their triumph, to depose from his high office one who had made himself politically obnoxious to them, greatly underestimate the case and impute unworthy motives where none exist. As a party measure it would be fruitless of results, as the removal from office of the present incumbent would place in the executive chair as his successor one of his party, the lieutenant governor, who is far less obnoxious to the people. It is a movement, Mr. Chief Justice and senators, which rises above all party considerations. It is the uprising of an outraged and oppressed people to vindicate the violated law. Of far less moment is the suggestion sometimes seen and heard that this prosecution ought not to be carried on in the present depleted condition of the public treasury and amid the financial prostration which abounds in all our borders. That it will cost money and further burden the people!

"The questions of dollars and cents, poor as are the people of North Carolina, oppressed as they have been, plundered as they have been, groaning as they are under a burden of taxation, is a suggestion underestimating, as it is unworthy of their honor, their intelligence, their virtue, and their patriotism. The price to be paid for liberty is always costly, sometimes in blood, invariably in treasure. No true son of North Carolina will hesitate to pay this price. God grant that it may never again be in blood! God grant that in all time to come brother may never in all this land be arrayed against brother in civil strife.

"Mr. Chief Justice and senators, the people of North Carolina have always been distinguished for their obedience to law and their love of liberty. If they possess any peculiar traits preeminent above all others, they are these. It has been so in all their history from the 20th of May, 1775, of Mecklenburg memory, to the present time. The cause which they seek to vindicate before this tribunal is not theirs only but the cause of all people who seek to preserve the forms of constitutional government and civil liberty. It is the cause of all free people and of all people struggling to be free the world over; the cause of New York and Missouri as well as North Carolina. The question is a great question. The issues are momentous issues. Are the principles of liberty, built up and established and perpetuated in Great Britain, handed down to our fathers, adopted by them and cemented with their blood—are these great principles of the English Bill of Rights of 1689, incorporated by the framers of our organic law into that instrument, of the great charter and habeas corpus, to be preserved in this country? No less issues than these are involved in this proceeding. Do we live in the enjoyment of constitutional freedom? Have we preserved unimpaired the liberties bequeathed to us by our English and American ancestors or have we adopted a higher law than these, the law of tyrants and of temporary majorities, which override and subvert at will the forms of constitutional freedom?

"Mr. Chief Justice, when those in whose persons the rights of freedom and the law of liberty have been violated by their unlawful arrest and imprisonment shall have appealed to the judiciary for relief in vain; when the people through their representatives shall have called upon the Senate, sitting as a court of impeachment, for redress in vain, then, indeed, will our liberties have departed. Then will a revolution in our form of government have taken place, fearful in its proportions and realized by none of us. Then will the glorious temple of liberty reared for us by our fathers, instead of being, as we had too fondly supposed, real, substantial, built of strong rock, and founded on a rock, have become as the house of the foolish man, built upon sand—swept away like similar fabrics of old by the strong hand of power and the 'necessity' pleas of tyrants."

Every step in the trial was contested, and both the managers and respondent introduced voluminous testimony. The chief justice presided with great ability, but there are several roll-call votes where, on motion of Judge Warren, he was overruled and evidence held competent by the senators was admitted.

On March 22, 1871, Governor Holden was convicted on six of the eight articles of impeachment, Judge Warren voting "guilty" on all of them, the judgment ousting him from office and debarring him from holding office in the future. Judge Warren filed a well-considered written opinion setting forth the reasons for his votes, which was concurred in by Senator L. C. Edwards, of Granville. He scathingly denounced the unlawful arrests of Josiah Turner, Judge Kerr, and others, and stated that "from the beginning to the close of the dismal drama he [Holden] was fatally bent on mischief." He availed himself of the opportunity to express his "abhorrence of the secret political societies which existed in Alamance," and closed with this:

"If in all this lawlessness, whether in Alamance or Caswell, I could find a justification or excuse for the lawless acts of the respondent, I would most cheerfully say so. One crime can not be set off against another. However, much turbulent and misguided men may have taken the law into their own hands, he was not at liberty to do so. They were citizens, and were entitled to the benefit of those provisions of the constitution which protect even the guilty from arrest, imprisonment, trial, and punishment, otherwise than by the law of the land."

In 1865 Judge Warren had voted for Holden for governor in his race with Worth, believing that in the few months that he had been provisional governor, he had made a splendid record, and was imbued with lofty sentiments in restoring government in the State. But when Worth was elected he gave his administration strong support, and immediately broke with Holden forever, when he endeavored to get the United States to intervene and nullify the Worth election. He always believed that Governor Holden was a man of the highest and purest personal character, and that while later surrounded by thieves and cutthroats, the personal integrity of the governor remained unstained. Every instinct of Judge Warren revolted against constitutional violations, and he voted to impeach Holden because he had flagrantly disregarded the organic law of the State.

Just a few weeks before the impeachment the Conservatives went into caucus to select a nominee for United States Senator. Vance was the leading candidate, but there was considerable opposition to him, and he was not nominated until the twenty-seventh ballot. For 18 ballots a movement headed by Col. W. A. Allen, of Duplin, father of the late Judges W. R. and O. H. Allen, cast 17 votes in the caucus for Judge Warren for Senator. On every ballot he voted for Vance. Finally he took the floor and told his friends that the same criticisms they had of Vance, applied with equal force to himself, and urged their support of the war governor. Vance got two majority in the caucus and was elected, but was not seated for that term.

At the same session, the Democrats, eager for constitutional reform, passed a bill for a convention, against the protests and rulings of Lieutenant Governor Caldwell, the day before he took over the governor's office. After he became the governor, he still insisted upon his opposition, and though the bill had been passed by both houses, he asked the supreme court for an opinion on its constitutionality. The court, merely upon the governor's request, filed an opinion, unfavorable to the action of the legislature, and then a storm broke out. On April 5, 1871, they adopted a resolution that an opinion of the supreme court, in a case not properly constituted, had no binding force or effect, and that the governor, having no veto power, could not sit in judgment on an act of the legislature and nullify it. The supreme court was reminded rather sharply to attend to its own business.

Judge Warren was outraged by such a procedure on the part of the governor, and led the attack on him in a speech continuing for three days. The Wilmington Star mentioned his application of Webster's reference to the vigilance of the "unhooded hawk" in his reply to Governor Caldwell's message, and said that he came as near as any man to realizing his own wish, that his "words might be as cannonballs." "His powers of sarcasm," said the article, "were simply terrific with his reference to the kitchen cabinet, and Snug, the joiner, and his 3-day speech on the governor will stand out as a famous philipic in legislative history."

The convention was submitted to the people, but the Grant administration was powerful enough to defeat it. Judge Warren, however, was again elected as the delegate from Beaufort.

A notable session had ended, conspicuous in its personnel and far reaching in its accomplishments. Comparison is always invidious. Certainly, the great internal-improvement program of the legislature under Governor Morehead will forever stand out. The bodies of 1887 and 1899 were splendid assemblages. In future years the general assembly of 1921 will be pointed to with pride by reason of its initiation of the road program and its vision for the educational and charitable institutions. It has been said that the house of 1923 was the strongest of a

quarter of a century. But the outstanding session of the General Assembly of North Carolina in the entire history of the State was that of 1870–71, when, under the leadership of brave and courageous men, the State was rescued from despotism and her bow once more pointed to ideals that Carolinians revere.

Judge Warren returned home upon the adjournment of the legislature a hopeless invalid, his body racked with muscular rheumatism, and the wheel chair he had been forced to take in Raleigh now became permanent. But his courage did not abate, and daily he was rolled to his office and the courthouse, and the firm of Warren, Carter & Myers had a law practice requiring the time of all of them.

In 1872 Colonel Carter received the Democratic nomination for Congress from the first district, to oppose the incumbent, Clinton L. Cobb, of Elizabeth City. While dominant in a courthouse and in the legislature, he was handicapped by not knowing how to make a political speech. He and his friends made a thorough canvass of the district, but he was defeated. It was used against Colonel Carter in that campaign, with some effect, that his name had appeared as a member of the Republican State executive committee in 1867, which, as already explained, he had disavowed.

By 1874 the Democrats had made such progress that they had already captured one of the Senatorships and five of the seven Representatives in Congress, and a wave of enthusiasm swept the East in the effort to redeem that section. About this time there arose out of the county of Hertford, Maj. Jesse J. Yeates, a former Confederate soldier and orator of much reputation, and one of the many able men that county has contributed to the State. Cobb, in Congress, had voted for the civil rights bill, and when Major Yeates secured the Democratic nomination, that became the sole issue. They met in joint debate in the Beaufort County courthouse to the edification of the Democracy. Major Yeates beginning his speech, informed the crowd that he was going to "take the corn off the Cobb," and he did it to their great delight. The next day he moved on to what was known as Barrows Fork, in Beaufort County, where they came from every section to hear him. So pleased were the people with his speech that they forthwith changed the name of the place to Yeatesville, which is to-day a prosperous community. Many years later, the polished Senator Matt W. Ransom came down from Northampton and delivered a speech at North Creek. He made such an impression on that locality that its citizens named the place Ransomville.

The Democrats, still in control of the legislature, submitted another convention bill, and the battle for the election of delegates was now on. Judge Rodman, still on the supreme court, became a candidate from Beaufort. The papers and political pamphlets of that day disclose that he did so with some reluctance, and that he was more or less drafted to make the race. It was felt that he had rendered such a high order of service in the convention of 1868 that the State should avail itself of his valuable experience. But political lines were tightly drawn, and the Democratic State committee was urging no compromise, especially as the Republicans were against the call for the convention.

So a young man who had moved to Washington from Virginia and became associated with Major Sparrow and had already made his mark after five years at the bar was named as the Democratic candidate. His name was James E. Shepherd, later to become a superior court judge and then chief justice of the supreme court. It was a very close contest, many Democrats casting complimentary votes for Judge Rodman, who was, however, defeated by a small majority. Judge Shepherd was one of the leaders in the convention of 1875.

In the spring of 1875 Judge Edwin G. Reade, of the supreme court, moved to Washington, induced to go there by his friend, Judge Rodman. For three years Washington had two members of the supreme court. Judge Reade owned the home where the writer was born, which was purchased from him by the writer's father after Judge Reade had left the bench and moved to Raleigh. He made himself most agreeable to the people of Washington, who were willing to overlook his bitter political proclivities and admire his brilliant intellect and judicial decisions.

It was about this time that Fenner B. Satterthwaite died. He was a most remarkable man. Many years prior to the war he had been cast into a debtors' prison in Beaufort County, and while there studied law and upon his release was admitted to practice. He had high ability and honored the profession. After the war this old Whig rendered yeoman service to the Democratic Party.

In the early part of July, 1876, two men rode into Washington in the same carriage, followed by a cheering throng on horseback and foot. They repaired to a grove to address the multitude. One was Zebulon B. Vance, the greatest of all war governors of the Confederacy, and for the time denied his seat in the United States Senate by the reconstruction acts. This former Whig leader and friend of the Union was now the Democratic nominee for Governor of North Carolina. The other was Judge Thomas Settle, of the supreme court, an ante bellum Democrat and now the Republican nominee.

It was a brilliant debate and issues only were discussed, each side receiving equal applause from their partisans. It was the last political act of Judge Warren. He struggled out of his rolling chair and introduced Vance, at the same time paying tribute to Settle, who had been active in 1866 in making him a superior court judge. In the election, Beaufort County gave Vance 137 majority, and it was the first time in the history of the county that it had ever given its popular approval to a Democratic candidate for governor. Three months later Tilden got a small majority, that being also the first instance where a Democratic candidate for President had ever carried it.

On December 10, 1876, Judge Edward J. Warren died. Physical suffering had made his last years ones of torture. He was only 50 years of age, but he was considered an old man. Of stern exterior, with sharp likes and dislikes, he was not a popular man, as the term is generally understood. But the people believed in him, and delighted to do him honor. His life since maturity had been one of constant storms. Uncompromising in his beliefs and opinions, fighting always for his well-thought-out and considered views, regardless of public approbation, he became one of the central figures in great constitutional, legislative, and judicial struggles, when liberty almost disappeared in North Carolina. He detested politics, yet he was thrown in their very vortex for nearly 30 years. He had a duty to perform, a high and lofty one, as he conceived it, and he did it. At a meeting of the bar and citizens, presided over by Colonel Carter, he was paid notable tributes. Judge Rodman came down from the Supreme Court and read the obituary he had prepared. The brilliant Maj. Louis C. Latham and Col. Edward C. Yellowley came from Pitt, and James Edwin Moore from Martin. Death had stayed the hand of politics, and friends and foes gathered.

Upon the death of Judge Warren, his law partner, Colonel Carter moved to Raleigh, where he at once took the position his wealth, character, and capacity commanded. He became director of the Raleigh National Bank and Home Insurance Co., member of the executive committee of the trustees of the university, the chairman of the commission to build the governor's mansion, and chairman of the board of the State's prison. He died in January, 1879, at the age of 49. His was another stormy life, filled with combat.

In 1881 Beaufort County again called on Maj. Thomas Sparrow and sent him to the house. His courtly manner and gentle spirit, his lofty ideals but firm convictions, made him almost venerated in the general assembly. His life was closed on January 14, 1884, at the age of 64.

In 1878, upon the expiration of his term on the supreme court, and after a service of 10 years on that tribunal, Judge William B. Rodman returned to Washington. He immediately entered into a large and lucrative practice, which continued to his death. It was nothing unusual to see this writer and expounder of the constitution arguing a question of law before some justice of the peace perched on a cracker box in some store where he held court. One time one of the members of the bar, knowing Judge Rodman was to try a case before the justice where the point involved had been decided by the supreme court against the contention Judge Rodman was now about to make, slyly informed the justice that he should read the opinion in that case. When Judge Rodman had finished his elaborate argument the justice with great glee confronted him with an opinion adverse to his argument written by himself when a member of the court. Judge Rodman quickly replied that since writing that opinion he had imbibed greater wisdom, and he was now stating exactly what the law should be. His practice carried him in all the courts in the adjoining counties, where he was esteemed, admired, and respected. After leaving the bench he never again took any interest in politics, feeling that his mission in that field had been accomplished. All of his family and descendants have been active Democratic leaders.

In the evening of his life he sat in his library, with his ever-present long-stem clay pipe, surrounded with his books. He died March 7, 1893, at the age of 76, leaving a lasting impression on the constitutional and judicial history of North Carolina. He outlived all of his old contemporaries at the bar.

Richard S. Donnell, Edward Stanly, Edward J. Warren, Fenner B. Satterthwaite, David M. Carter, Thomas Sparrow, and William B. Rodman were now all dead, and the last of the illustrious ante and post bellum bar had passed off the scene. Most of them had seen the beginning of new faces coming on in their stead, for with 1870 and extending through the eighties, a procession of able, brilliant, and capable men started out to constitute the bar of Washington for another era. James E. Shepherd, George H. Brown, George Sparrow, Charles F. Warren, John H. Small, William B. Rodman, and Enoch S. Simmons made up this array and took high rank in the profession.

There has been no attempt in these articles to present the congressional records of Stanly and Donnell. The former, on account of his long service in Congress, was a recognized Whig leader, and exerted commanding influence. He was a close friend of Clay and Webster. Mr. Donnell retired from choice after serving only one term. Nor has there been any attempt to go into the legislative acts bearing the names of Mr. Donnell, Judge Warren, Major Sparrow, or Colonel Carter. At the time they served the judiciary committee was all powerful, and was only composed of a select few in each house, so the first three either introduced or sponsored a large part of the important legislation of that period. Both Stanly and Donnell were speakers of the house at critical periods in the State's history. The activities of Mr. Donnell, Mr. Satterthwaite, Judge Warren, and Judge Rodman in the several constitutional conventions and the work of the latter two on the superior and supreme courts have also been slightly touched upon. Above

everything else, all of these men were lawyers. The articles have dealt more with their political activities in a trying time in the State's history. It has been felt that the important rôles they played have not been given the recognition justly due them. Actuated naturally by county pride, and with a deep appreciation of their works, these pen pictures of her sons are presented as Beaufort County's contribution to a notable era of North Carolina history.

CONSOLIDATION OF VETERANS' ACTIVITIES

Mr. WILLIAMSON. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the further consideration of the bill (H. R. 10630) to authorize the President to consolidate and coordinate government activities affecting war veterans.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union, with Mr. HALE in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. The Chair will state that when the committee rose the first section of the bill had been read and sundry amendments had been adopted. There is no pending amendment and the section is still open to amendment.

Mr. KNUTSON. Mr. Chairman, I move to strike out the last word.

I would like to ask the gentleman from South Dakota if we can not change this bill so as to create a bureau of veterans' affairs in the Department of the Interior, to be administered by an assistant Secretary of the Interior for veterans' affairs? If the gentleman will accept an amendment of this kind it will accomplish what he seeks to do in the way of unification and coordination and at the same time will remove the objections of those who are apprehensive over what will happen to the Pension Bureau in the event the legislation is passed in its present form.

Mr. LAGUARDIA. What is the gentleman's suggestion?

Mr. KNUTSON. To create a bureau of veterans' affairs in the Department of the Interior. The gentleman from New York [Mr. LAGUARDIA] will agree with me that doing business with an independent bureau is not satisfactory. I think it should be the policy of Congress to discourage the creation of independent bureaus.

I have here an amendment which I would substitute for the measure we have under consideration. It accomplishes everything that the gentleman seeks to do, and I think we could put the bill through as amended in half or three-quarters of an hour.

Mr. SCHAFER of Wisconsin. Will the gentleman yield?

Mr. KNUTSON. Yes.

Mr. SCHAFER of Wisconsin. I may state that the voluminous hearings held on the pending bill indicate that the veterans' organizations speaking for the World War veterans are opposed to a consolidation under the Department of the Interior.

Mr. KNUTSON. Let me ask the gentleman what percentage of all the veterans these organizations represent. If we are going to legislate just the way we are asked by the various organizations throughout the country, we might as well abdicate and let them come in here and legislate direct.

Mr. SCHAFER of Wisconsin. I believe the gentleman himself gives a little thought to the wishes of the representatives of these great veterans' organizations.

Mr. KNUTSON. Absolutely. I yield to none in my loyalty and interest in the veterans and I am always ready to hear their representatives.

Mr. WILLIAMSON. I may state to the gentleman that to undertake at this late stage of the game to transfer these activities to the Interior Department would involve practically a rewriting of the whole bill and I think it would be utterly impossible to do it at this late hour.

Mr. KNUTSON. Let me say to the gentleman that I have a bill that has been very carefully thought out and one that I think will accomplish the purpose. In a nutshell the whole thing is that it will create a bureau of veterans' affairs in the Department of the Interior, with an Assistant Secretary of the Interior to be known as the assistant secretary of the interior for veterans' affairs, who will have full charge of all these matters.

Mrs. ROGERS. Will the gentleman yield?

Mr. KNUTSON. I yield.

Mrs. ROGERS. Does not the gentleman know—and I am sure he does—that under President Hoover, when he was Secretary of Commerce, the Department of Commerce rose from the least efficient department of the Government to the most efficient department in the Government? President Hoover apparently approved of this bill. Why can not we give him a chance to see what he can do with this organization plan? If you will give him this opportunity, I believe that you will have the best organization for veterans' affairs that you have ever had.

Mr. KNUTSON. The lady from Massachusetts must realize that the responsibility for legislation lies not with the President but with Congress.

Mrs. ROGERS. I know that is true, but we have a high regard for the ability of the President as an organizer, and Congress can well follow his recommendations.

Mr. KNUTSON. I have been giving consideration to veterans' legislation for the past 14 years, and I am satisfied that we are going to aggravate a badly aggravated situation if we pass this legislation in its present form. I am very apprehensive of it—based upon the 14 years' experience in veterans' legislation.

Mr. MAAS. The President has general charge and jurisdiction of the Department of the Interior, as he has of the other departments.

Mr. KNUTSON. Absolutely; and it should be the policy of Congress to reduce the number of independent bureaus.

Mr. COLE. Will the gentleman yield?

Mr. KNUTSON. Yes.

Mr. COLE. Does this include all veterans' legislation under this one department?

Mr. KNUTSON. All veterans' activities.

Mr. COLE. The Veterans' Bureau would go out of existence?

Mr. KNUTSON. No.

The CHAIRMAN. The time of the gentleman from Minnesota has expired.

Mr. KNUTSON. I ask, Mr. Chairman, for five minutes more.

The CHAIRMAN. Is there objection?

There was no objection.

Mr. WILLIAMSON. May I inquire of the gentleman if he intends to offer a complete substitute bill?

Mr. KNUTSON. Yes.

Mr. WILLIAMSON. The gentleman would not offer it at this stage?

Mr. KNUTSON. I thought if we were going to do anything like that, it might be offered now in the interest of economy of time.

Mr. WILLIAMSON. I question whether his amendment might not be subject to a point of order. The gentleman is proposing to do something entirely different from what is contemplated in the pending bill.

Every organization in the country has appeared before our committee through its representatives and agreed that for the time being the thing to do is to consolidate the national homes, the Veterans' Bureau, and the Pension Bureau into an independent establishment, because the three combined activities are larger than any department of the Government to-day, and until we have an opportunity to reorganize the Interior Department we think it would be better for the time being, at least, to keep them independent. The committee felt that for the time being the best way to handle the situation was to create an independent establishment, and if at some future time the situation should be such that we could put it into some department, it could readily be done. At the present time it would overload any department into which it might be put.

Mr. KNUTSON. That is one of the objections I have. We are playing the old policy of mañana—to-morrow—at some future date we will correct the evils that are cursing us. Why not take the situation by the horns now and do what we have ultimately got to do if we are to have satisfactory relief?

Mr. WILLIAMSON. I think the veterans who are to be benefited ought to have some voice with respect to the character of organization which is to supervise their affairs. I do not think we should entirely ignore them in this matter. They are unanimous, as far as I know, in insisting at least for the time being upon an independent unit for the management of veterans' affairs.

Mr. KNUTSON. Let me say that I have received scores of letters in the past week commending the stand I am taking with reference to the bill that has been prepared by the gentleman's committee. Every veteran who has had trouble in the Veterans' Bureau—I am safe in saying—is in favor of the substitute legislation.

Mr. CRAMTON. If the gentleman will yield, let me suggest that the customary course would be to offer the substitute to section 1 of the pending bill, with notice that if agreed to the gentleman would move to strike out the succeeding sections of the Williamson bill.

Mr. KNUTSON. I shall give the gentleman a copy of the bill. Perhaps I should have done that before.

Mr. WILLIAMSON. After we finish the reading of the bill under consideration the gentleman can offer a substitute for the whole bill.

Mr. MOORE of Virginia. Mr. Chairman, will the gentleman tell us what he is proposing?

Mr. KNUTSON. The gentleman from Virginia is aware that the purpose of the legislation we are now considering is to consolidate and coordinate all veterans' activities.

The CHAIRMAN. The time of the gentleman from Minnesota has again expired.

Mr. KNUTSON. Mr. Chairman, I ask unanimous consent to proceed for five minutes.

The CHAIRMAN. Is there objection?

Mr. BANKHEAD. Mr. Chairman, reserving the right to object, some of us would like to find out what the parliamentary situation is. Has the gentleman from Minnesota made any concrete proposal?

Mr. KNUTSON. Yes; I have offered a proposal.

The CHAIRMAN. The gentleman from Minnesota has offered a pro forma amendment.

Mr. BANKHEAD. The gentleman is discussing the pro forma amendment?

Mr. KNUTSON. Not exactly a pro forma amendment.

Mr. BANKHEAD. Let us find out what the parliamentary situation is.

The CHAIRMAN. The first section of the bill has been read and is still open to amendment. The Chair recognized the gentleman from Minnesota to move to strike out the last word.

Mr. BANKHEAD. The gentleman from Minnesota disclaims that it is a pro forma amendment that he has offered.

Mr. KNUTSON. I took the time in order to explain to the gentleman from South Dakota, the chairman of the committee, that I have a measure I would like to offer as a substitute. I have not as yet offered it as I first wanted to explain what it is. The gentleman from Virginia [Mr. MOORE] asked me a question which I was about to answer when the gentleman from Alabama rose.

Mr. BANKHEAD. Still reserving the right to object, is it the gentleman's purpose to offer a substitute?

Mr. KNUTSON. Yes.

Mr. BANKHEAD. The gentleman will have to offer it on this section?

Mr. KNUTSON. Yes.

The CHAIRMAN. Is there objection to the request of the gentleman from Minnesota?

There was no objection.

Mr. KNUTSON. Mr. Chairman, the aim of the bill under consideration is to consolidate and coordinate. I think there is no difference of opinion upon the necessity and advisability of taking that action, but I am proposing to offer a substitute for the bill we are now considering, which creates an independent bureau to handle all veterans' activities. I want to transfer the Veterans' Bureau over to the Department of the Interior, to be administered directly under an Assistant Secretary of the Interior for veterans' affairs, and if the aim of Congress is to coordinate and consolidate, I can not see how anyone can possibly object to the substitute I am about to offer.

Mr. MOORE of Virginia. As I understood the gentleman a while ago, he said he proposed to follow his motion, in case the substitute should be adopted, by motions to strike out the other sections of the bill under consideration.

Mr. KNUTSON. Yes; the entire measure.

Mr. COLTON. Mr. Chairman, will the gentleman yield?

Mr. KNUTSON. Yes.

Mr. COLTON. I take it the committee has not had any chance to consider the gentleman's substitute. Has it been considered by any committee?

Mr. KNUTSON. I think the substitute was presented to the committee early in the history of the legislation.

Mr. COLTON. Is this in substance the bill that was suggested by the Commissioner of Pensions?

Mr. KNUTSON. Yes. Mr. Chairman, is it in order to offer it as a substitute at this time?

The CHAIRMAN. Does the gentleman state that he proposes to offer a substitute for the entire bill?

Mr. KNUTSON. Mr. Chairman, I offer the following as a substitute for section 1, with notice that I shall move to strike out the remaining sections of the bill under consideration as they are reached.

The CHAIRMAN. That motion is in order. The Clerk will report the amendment offered by the gentleman from Minnesota.

The Clerk read as follows:

Amendment by Mr. KNUTSON: Strike out all of section 1, and insert in lieu thereof the following:

"*Be it enacted, etc.*, That the President is hereby authorized to appoint, with the advice and consent of the Senate, an additional assistant to the Secretary of the Interior, to be known as assistant secretary of the interior for veterans' affairs, who shall perform such duties in the Department of the Interior as may be prescribed by the Secretary, or as required by law, and specifically to coordinate and administer agencies dealing with veterans' affairs now existing in the Department of the Interior or which may hereafter be transferred thereto as hereinafter provided.

"SEC. 2. That the President is hereby authorized, by Executive order, so soon as orderly administration will permit, to transfer to the Department of the Interior, the National Home for Disabled Volunteer Soldiers, the Battle Mountain Sanitarium Reserve, and the United States Veterans' Bureau, to the end that said agencies, together with the Pension Bureau already in the Department of the Interior may continue to function as administrative units under the general supervision of the Secretary of the Interior; and general supervision of the powers and duties now conferred by law upon the several agencies named in respect to the activities so transferred are hereby vested in the Secretary of the Interior: *And, provided,* That the transfer of employees under this authority shall not be held to affect their status under the laws relating to the competitive classified civil service, or under the civil service retirement act, except as may be expressly provided by the President in the exercise of his authority under existing laws.

"SEC. 3. Upon transfer of the administration of the National Home for Disabled Volunteer Soldiers, pursuant to the preceding section, all duties and authority relating to the home as are now imposed on the Secretary of War by the act of August 18, 1894 (28 Stat. 412); act of March 3, 1893 (27 Stat. 653); act of March 3, 1875 (18 Stat. 359); and the act of October 2, 1888 (25 Stat. 543), shall vest in the Department of the Interior. Section 4835 of the Revised Statutes is hereby repealed.

"SEC. 4. That for the purpose of carrying out the provisions of this act the President is hereby authorized to make proper transfer of all moneys appropriated for the benefits of the respective governmental agencies, the duties and powers of which may be transferred under this authority: *Provided,* That any moneys heretofore or hereafter appropriated for the use of any executive or administrative department, or governmental agency, transferred under the authority of this act shall be expended only for the purposes for which they were appropriated."

Mr. WILLIAMSON. Mr. Chairman, I make the point of order that the proposed amendment is not germane to section 1 of the bill, or as a substitute to the bill before the committee.

The CHAIRMAN. The Chair will hear the gentleman from South Dakota.

Mr. WILLIAMSON. It is up to the gentleman from Minnesota, I guess.

Mr. KNUTSON. Oh, no; I think not. The gentleman from South Dakota has brought an indictment against my amendment, and it is up to him now to present a bill of particulars.

Mr. WILLIAMSON. Mr. Chairman, the bill before the committee is a bill which consolidates all veterans' activities in a new agency known as the administration of veterans' affairs, and creates a head for that establishment who is given control of the three activities. The amendment now proposed as a substitute to section 1 seeks to transfer the three activities into the Department of the Interior, creating a new position of Assistant Secretary, who will have some sort of supervision of the three activities without being given any definite duties with respect to them.

The gentleman's amendment proposes to leave all existing activities entirely intact. There is, in fact, no consolidation at all. All it does is to bring them in together and put them into the Department of the Interior, with some undefined supervisory powers on the part of the Secretary, but with no power to control the activities or do anything effective toward coordination of activities. In other words, the amendment has an entirely different purpose in mind.

The bill before the House is a real consolidation bill, which brings the units together under one supervising head and makes them subject to the direction and control of the administrator. The proposed amendment simply transfers the activities and places them under the Secretary of the Interior, but continuing the board of managers with the same power to function as it has now. The Secretary of the Interior would have no power to control that body, but at best could only act in an advisory capacity. The same is true with respect to the Veterans' Bureau. The Pension Bureau is now subject to the direction and control of the Secretary of the Interior, and presumably would continue to function exactly as it does now.

So that it seems to me this amendment has an entirely different purpose in mind. The bill authorizes the President to consolidate the activities. The proposed substitute does nothing of the sort.

Mr. KNUTSON. The gentleman from South Dakota [Mr. WILLIAMSON] has made a very able explanation as to the difference between tweedledee and tweedledum. The purpose of

the bill is to consolidate and coordinate. The bill that we are now considering proposes to put the Pension Bureau in with the Veterans' Bureau. My proposal is to place the Veterans' Bureau with the Department of the Interior, under an assistant secretary of the interior for veterans' affairs.

I can not for the life of me see where there is any conflict. The purpose of the proposal to consolidate and to coordinate is to give greater efficiency in the administration of veterans' affairs.

Mr. WILLIAMSON. Mr. Chairman, will the gentleman yield?

Mr. KNUTSON. I will be glad to yield to the gentleman.

Mr. WILLIAMSON. The gentleman does not contend that the bill he offers as a substitute would in any way curtail the functions of the Veterans' Bureau or the National Home for Disabled Volunteer Soldiers or the Pension Bureau, or that it would give any real control to the Secretary of the Interior of the Veterans' Bureau or the National Home for Disabled Volunteer Soldiers? You are not conferring any real power or function on the Secretary of the Interior; neither are you transferring the functions of these bureaus to the Department of the Interior.

Mr. KNUTSON. What do you propose to do with the national homes?

Mr. WILLIAMSON. To consolidate them and bring into the general system.

Mr. KNUTSON. What do I propose to do—to eat them? [Laughter.]

Mr. WILLIAMSON. You are not doing much of anything with them. We shall still have three separate activities.

Mr. KNUTSON. The purposes of both are identical. My amendment proposes to place the Veterans' Bureau under the Department of the Interior. The gentleman's bill proposes to take the Soldiers' Home and the Pension Bureau into the bureau of veterans' affairs. The only difference is as to the method. We are both aiming at the same thing, and so far as that goes I concede that the affairs of the veterans would be ably administered either way. But my purpose in offering the amendment is to give the Veterans' Bureau the benefit of the 150 years of valuable experience gained by the Pension Bureau. The Secretary of the Interior has the right under the amendment offered by myself to promulgate new rules and regulations for the administration of the bureau as he may deem expedient and necessary.

Mr. CRAMTON. Mr. Chairman, in order to determine whether the amendment is germane to the pending bill, the main purpose of the bill is to be sought, and then determine whether the details of the bill offered as a substitute are germane to that main purpose. The main purpose of the bill is first to be sought from the title. I admit that the title is not conclusive as to the scope of the bill, but always the drafter of a bill does attempt to give its general purpose in the title. The Williamson bill has this title:

A bill to authorize the President to consolidate and coordinate governmental activities affecting war veterans.

That might be assumed, until something to the contrary appears, to be the expression of Judge WILLIAMSON, the author of the bill, as to its purpose, as he has expressed it in its title.

The Knutson substitute reads, in the title:

A bill to authorize the President to coordinate governmental activities and agencies affecting war veterans and pensioners.

It is identical as far as the meaning is concerned. One is to "consolidate and coordinate." The other is to "coordinate governmental activities," by this consolidation, of course.

When you come to the text of the bill itself, Mr. Chairman, not leaving it alone to a comparison of the titles, it is to be remembered that the Williamson bill now before the House is not the Williamson bill that was reported by the committee. Since its being reported an operation has been performed upon it, and a subdivision of section 1 has been eliminated, subsection (b). Subsection (b), it is to be assumed, meant something. I do not believe that committee would have reported out a subsection that did not mean anything. Its elimination has been agreed to, and that subdivision that was formerly in the bill and is no longer in the bill, gave the President the power to consolidate, eliminate, and redistribute functions. That subdivision has been taken out of the bill.

The bill no longer carries that language authorizing the President to redistribute its functions. The bill carries only this language:

The President is authorized to consolidate and coordinate any hospitals and executive and administrative bureaus, etc., concerned in the administration of the laws relating to veterans.

The Knutson bill is not identical. There would be no point in offering a substitute if it were to be identical, but it is very similar as to the scope of the authority. The President is authorized to appoint an assistant secretary of the interior and specifically—

To coordinate and administer agencies dealing with veterans' affairs now existing in the Department of the Interior or which may thereafter be transferred thereto as hereinafter provided.

The balance of the bill provides for the transfer.

I am not personally particularly enthusiastic about the substitute bill. I do not think it cures all the evils of the Williamson bill, but it does appeal to me as germane and in order and proper to come before the House for its determination of this problem. The main feature of each bill is that there be a bringing together, a coordination, of the agencies having to do with veterans' affairs. That is the main purpose of each bill. Just how that is to be best done the House should have the opportunity to determine. Whether it shall be as the Williamson bill provides, by the establishment of a new, independent agency, or whether it shall be through consolidation within the existing departments of the Government, is a detail of the plan that the House should have an opportunity to determine. But the main feature of each bill is the bringing together of these veterans' activities.

That being true, the Knutson substitute would be germane to the bill.

Mr. FORT. Mr. Chairman, an examination of the first paragraph of the substitute offered by the gentleman from Minnesota [Mr. KNUTSON] discloses that it purports to create an assistant secretary of the Interior and to confer upon him not only duties which may be germane to the legislation, H. R. 10630, but any other duties which may be assigned to him by the Secretary of the Interior.

In other words, the substitute as offered is not a substitute for the pending legislation but is for the creation of a new office with broad powers, in no way specified or mentioned in the act. Without some limitation on the scope of that authority to the provisions of the bill for which it is offered as a substitute, it seems to me clearly a broader piece of legislation, having relation to subject matter not in the contemplation of nor within the jurisdiction of the committee reporting this bill. This committee would have no authority, I take it, to report legislation relating to the internal structure of the Department of the Interior or the creation of an assistant secretaryship in that department for the general functions of the department.

Mr. CRAMTON. Will the gentleman yield?

Mr. FORT. I yield.

Mr. CRAMTON. I am sure the gentleman from South Dakota [Mr. WILLIAMSON] would never admit that his committee did not have that jurisdiction. As a matter of fact, it does have that jurisdiction.

Mr. FORT. If the committee has jurisdiction, it has not reported a bill relating to the creation of such an office or the conferring upon the Secretary of the Interior of power to give to this administrative officer such powers and functions and duties as he may see fit to assign, whether relating to veteran activities or any of the other duties assigned by law to the Secretary of the Interior.

Mr. KNUTSON. Will the gentleman yield?

Mr. FORT. I yield.

Mr. KNUTSON. The gentleman from New Jersey [Mr. FORT] is aware of the fact that the Williamson bill creates an administrator of veterans' affairs. Is that not a new office?

Mr. FORT. It creates an administrator of veterans' affairs, not as an officer of the Department of the Interior, and not as an officer to whom the Secretary of the Interior may assign duties having nothing whatever to do with veterans' activities, nor may anyone else so assign duties to him. The substitute offered by the gentleman from Minnesota [Mr. KNUTSON] creates an Assistant Secretary of the Interior, who shall perform such duties in the Department of the Interior as may be prescribed by the Secretary or as may be required by law.

Mr. KNUTSON. Let me call the attention of the gentleman to paragraph (b) of section 1 of the Williamson Act.

Mr. LAGUARDIA. That is out of the bill now.

Mr. KNUTSON. That was stricken out. But, even though it were stricken out, the gentleman from New Jersey [Mr. FORT] will nevertheless admit that because of the fact that the amendment which I offered will broaden the scope of the work, it does not make it not germane.

Mr. FORT. The point I make is that under the substitute offered by the gentleman from Minnesota [Mr. KNUTSON] the Secretary of the Interior would have authority to transfer to this newly created Assistant Secretary the duties of the Bureau of Mines, the duties of any other part of the Department of the Interior, whether or not those duties had any reference to veterans' affairs, whereas the bill as introduced by the committee

limits the functions of the administrator to those matters relating to veterans' activities.

Mr. WILLIAMSON. Mr. Chairman, I wish to again call the attention of the Chair to the fact that the bill before the House simply seeks to consolidate and coordinate the Veterans' Bureau, the National Homes for Disabled Volunteer Soldiers, and the Bureau of Pensions in an establishment to be known as administration of veterans' affairs. That is a separate and distinct establishment, independent, under the President.

Now, what does the substitute propose to do?—

> The President is hereby authorized to appoint, with the advice and consent of the Senate, an additional Secretary of the Interior, to be known as Assistant Secretary of the Interior for Veterans' Affairs, who shall perform such duties in the Department of the Interior as may be prescribed by the Secretary or be required by law.

The proposed substitute sets up an entirely separate and distinct establishment and bears no relation to what the bill is seeking to do. It does not consolidate these activities in a new department, but simply in general terms provides that they shall be placed under the Secretary of the Interior and creates the office of an Assistant Secretary, who is made subject to the orders of the Secretary. His powers and duties are not defined, but it is simply provided that they shall be prescribed by the Secretary of the Interior. It seems to me there is a very clear distinction between the bill and the substitute. The bill proposes a method of consolidation, creates a new establishment, and defines the powers of its administrator. This establishment is made independent. The proposed substitute proposes not to consolidate, or even coordinate, but to bring the three activities into the Department of the Interior, giving to the Secretary only a very limited supervisory function. Not only is the purpose not the same but it in effect creates an entirely separate and distinct set-up and administration.

The CHAIRMAN (Mr. HALE). The Chair feels that the question on the point of order is very close. The substitute obviously seeks to accomplish the same end which section 1 seeks to accomplish and which the original bill seeks to accomplish. The substitute is offered as a substitute for section 1, but is in effect a substitute for the entire bill. It seeks, however, the end sought by the original bill, but by an entirely different method.

The Chair calls attention to a ruling by Chairman Sanders on May 24, 1924, in the Committee of the Whole House, where this rule was laid down—Cannon's Precedents, section 9777:

> One of the functions of the rule requiring germaneness is to avoid consideration of legislation which has not been considered in committee, and for this reason the rule should be invoked with particular strictness against amendments proposing substitutes for an entire bill.
>
> To a proposition to effect a purpose by one method a proposal to effect the same purpose by a different and unrelated method is not germane.

The Chair feels that the balance on this question rests on the strict interpretation of that rule, and is of the opinion that the substitute is not germane, and therefore sustains the point of order.

Mr. LAGUARDIA. Mr. Chairman, I rise in opposition to the pro forma amendment. I simply want to call the attention of the committee to the fact that if we are to have a bill consolidating the various veterans' activities let us have a bill that means something. As the bill now stands it is weak, and unless the committee can succeed in eliminating the amendment heretofore adopted—that is, the proviso added to section (a), and restoring section (b) to the bill, we might as well vote to strike out the enacting clause. Section (b) takes the real power away from the bill.

Mr. WILLIAMSON. Will the gentleman yield?

Mr. LAGUARDIA. Yes.

Mr. WILLIAMSON. I think not. While I consider subdivision (b) an important provision, as the gentleman knows——

Mr. LAGUARDIA. Otherwise you would not have put it in the bill.

Mr. WILLIAMSON. Yet I do not believe it is fatal to have it stricken out, because the gentleman will note that section 2 prescribes that the duties, powers, and jurisdiction of the Soldiers' Homes Board, the Director of the Veterans' Bureau, and the Commissioner of Pensions shall be transferred to the new administrator. Another section provides that the administrator shall make such rules and regulations as will properly correlate and coordinate the three activities. We do not give the administrator the broad powers which I thought he should have but nevertheless even with subdivision (b) of section 1 out he would still have sufficient power to make an effective reorganization.

Mr. LAGUARDIA. The gentleman will concede that by the amendment the Pension Bureau is left intact.

Mr. WILLIAMSON. No; we are keeping the Pension Bureau in.

Mr. LAGUARDIA. The adopted amendment provides that the Pension Bureau shall not be abolished. I fear that would prevent any change in the Pension Bureau, even to coordinate it with the other activities of the newly created bureau.

Mr. WILLIAMSON. No, indeed. The Pension Bureau is in.

Mr. KNUTSON. If it were, we would allow you to pass the bill.

Mr. LAGUARDIA. Then I will say to the gentleman from South Dakota that he should protect his bill. Let us not make a mess of it, as happened a few days ago.

The President of the United States has demonstrated a genius for organization. Why not give him full power to take these three separate activities and all odds and ends and put them in one department? If you are going to do that, let us do it. Let us give him full power to take all the veterans' activities and place them in one department. We discuss so much the duplication of effort and the waste and efficiency of the various bureaus of the Government and now that we have the opportunity of doing a constructive piece of work there seems to be so much opposition. I do not care in what particular department you place these bureaus and offices as long as you place all of the veterans' activities in one department. I think it will reduce the cost and increase the efficiency.

Mr. KNUTSON. I agree with the gentleman.

Mr. LAGUARDIA. This being so, it is difficult on the spur of the moment, I want to say to the gentleman from Minnesota [Mr. KNUTSON], to accept a substitute that we have not had an opportunity to consider.

Mr. COLTON. Will the gentleman yield?

Mr. LAGUARDIA. Yes.

Mr. COLTON. During the time we were debating this bill the other day I made the statement myself that subsection (b) was the very heart of the bill, but a subsequent study of the bill has convinced me there is still left in the bill enough to make it a good bill if we will protect what is left.

Mr. LAGUARDIA. Exactly; but, of course, subsection (b) was not put there with any idle purpose. It was put there to give broad power to the President to reach out and bring into one department all activities; and to remove, to appoint, to eliminate, to change, and to do everything necessary to establish a consolidated department taking over all veteran activities.

Mr. COLTON. And I may say to the gentleman I believe it is absolutely necessary.

Mr. LAGUARDIA. I do, too.

Mr. COLTON. But I still believe, I repeat, there is sufficient left in the bill to make it a good, workable bill if we will protect what is left.

The CHAIRMAN. The time of the gentleman from New York has expired.

Mr. LAGUARDIA. Mr. Chairman, I ask unanimous consent to proceed for two minutes more.

The CHAIRMAN. Without objection, the gentleman from New York is recognized for two additional minutes.

Mr. LAGUARDIA. Is it understood that the bill now is sufficiently broad to bring in the Pension Bureau?

Mr. COLTON. I so understand.

Mr. SCHAFER of Wisconsin. Will the gentleman yield?

Mr. LAGUARDIA. I yield.

Mr. SCHAFER of Wisconsin. We have to compromise in matters of legislation, and it is a calamity, in my judgment, that the Secretary of the Interior and the Commissioner of Pensions, both appointees of the President of the United States, are putting every stumblingblock they possibly can in the way of carrying out this consolidation program, which is favored by the President.

Mr. LAGUARDIA. The gentleman is big enough, I am sure, to step over any stumblingblock. That is what we are here for. We can listen to the opinions and to the recommendations of all officials and consider their departmental pride, but the caution I want to throw out now is that we should not go amendment mad on this bill, as we did a few days ago. If we are going to have a consolidation bill, let us have one that will contain the necessary power to accomplish the purpose.

Mr. CRAMTON. Mr. Chairman, I offer an amendment. On page 1, line 9, strike out the words "the Bureau of Pensions."

The CHAIRMAN. The gentleman from Michigan offers an amendment, which the Clerk will report.

The Clerk read as follows:

> Amendment offered by Mr. CRAMTON: Page 1, line 9, after the word "including," strike out the words "the Bureau of Pensions."

Mr. CRAMTON. Mr. Chairman and gentlemen of the committee, I have offered the amendment that meets my prime objection to the bill. The bill is urged as an economy measure. So

far as the Veterans' Bureau is concerned, what effect it may have on that bureau to change the title of the chief officer from director to administrator, or something of the kind, I am not aware. This may save a good many million dollars, although I doubt it. The same individual, exercising the same functions, with a different salary and a different title, is apt to give about the same results.

So far as the consolidation of the hospitals and the homes is concerned, I suspect there is an opportunity to accomplish something there, but as to these matters I am not well informed.

I think I do know something about the operation of the Bureau of Pensions, but I say to the House that the passage of this legislation instead of resulting in economy will cost the Government at least one-half million dollars of salary increases and increase of personnel in the Bureau of Pensions after its transfer.

Mr. LAGUARDIA. Will the gentleman yield right there?

Mr. CRAMTON. Yes.

Mr. LAGUARDIA. The gentleman is always accurate in his statements and has had a great deal of experience on the appropriation bill for the Department of the Interior; will the gentleman state how it will increase the cost to consolidate and decrease the cost by leaving out the Pension Bureau?

Mr. CRAMTON. In this way. The Bureau of Pensions is now administered very economically both as to the number of personnel and as to salaries paid them. It is to be remembered that compared with the Veterans' Bureau the Bureau of Pensions is a very small affair. It is so small that it will not appreciably affect the Veterans' Bureau, but the Veterans' Bureau will affect it. The policies and the practices of the Veterans' Bureau as to number of personnel and as to salaries paid them will at once become the standard for the Bureau of Pensions and this very fact alone will mean an increase of at least one-half million dollars in expense to the Government.

It is true I handle the appropriation bill that carries the appropriations for the Bureau of Pensions, and some may be unkind enough to think that because of this fact I am jealous of losing a little power or authority. It happens, however, that in that part of the Interior Department appropriation bill there are no policies to be determined, there is no opportunity for exercise of power or authority, and I think those familiar with my work here will know that I have enough work to do, and will have enough work to do, even if the Bureau of Pensions is taken out of the Interior Department bill; but I feel I would not be fair with the House if I failed, even in the face of a possible adverse majority, to express my judgment gained by my experience of some 8 or 10 years in handling the appropriations for this bureau. No definite showing has been made of any saving, but there will be salary increases and there will be an increase in the number of the personnel.

Mr. COLTON. Will the gentleman yield?

Mr. CRAMTON. Yes.

Mr. COLTON. Has the gentleman any figures as to the ratio of the expense of administration in carrying on the Bureau of Pensions, compared with the amount appropriated and the ratio of the expense of administration in the Veterans' Bureau, compared with the amount appropriated?

Mr. CRAMTON. Let me ask my friend from Utah, did his committee make any comparisons of salaries now paid in the Bureau of Pensions and salaries now paid in the Veterans' Bureau for the same kind of work? It is my understanding the committee did not. It would have been a very pertinent line of inquiry for the committee. If they had made the investigation, they would have found that for the same kind of work much less is paid in the Bureau of Pensions than in the Veterans' Bureau.

The CHAIRMAN. The time of the gentleman from Michigan has expired.

Mr. CRAMTON. Mr. Chairman, I ask unanimous consent to proceed for five additional minutes, and I am going to try to complete my statement in that time.

The CHAIRMAN. Without objection, the gentleman from Michigan is recognized for five additional minutes.

Mr. COLTON. If the gentleman from Michigan will permit, our committee, after very careful investigation, found that there was hardly any place along the line where one can compare the work of the Veterans' Bureau with the work of the Bureau of Pensions. The work parallels in few respects, except certain clerical and investigation work.

Mr. CRAMTON. If that is true, if the committee investigating this question could not find any work or any place where the Veterans' Bureau was performing the same kind of work as the Bureau of Pensions, then how are you getting any economy by a consolidation of diverse activities?

Mr. COLTON. It is true that there is some clerical work that parallels or is duplication.

Mr. CRAMTON. Compare that—compare the director, the legal, the medical, the clerical, the janitor force, and you will find that they are paying more in the Veterans' Bureau. Of course, as soon as this becomes a law you will have to equalize them and bring them up to the Veterans' Bureau standard.

Mr. COLTON. The testimony is that as time goes on there will be a material duplication of work. But the gentleman has not answered my first question.

Mr. CRAMTON. It is practically immaterial—the question I asked the gentleman is of much more importance. Now, I do not want to take much more time; I fear the thing is all set, but I want to be on record as offering the amendment as my best judgment.

Mr. WILLIAMSON. Does the gentleman think that this is only a question of the efficiency of bureaus? We want to consolidate these activities and this consolidation is broader than that.

Mr. CRAMTON. I am as much in sympathy with economy as anyone, but I have not been able to see any economy in this—I have not been able to see any place where a duplication will be eliminated, but I can see where a nice salary increase program is in prospect. Subdivision (b) has been eliminated from the bill, but that major operation does not worry the gentleman from South Dakota as much as you would think.

I want to call to the attention of the gentleman from South Carolina [Mr. GASQUE], on whose motion subdivision (b) was stricken out of the section, that that is the one that seems to have the real power in it, authorizing the President to eliminate and redistribute these functions. Judge WILLIAMSON says that he is satisfied that the elimination of subdivision (b) has not hurt the bill. Why? For the reason that there is no law for any responsibility or authority in the Bureau of Pensions except as the President continues the duties, and the chairman of this committee knows that even with subdivision (b) taken out of the bill the President still, under the authority that the general law gives him, could take every function away from the Bureau of Pensions that he wishes to.

The gentlemen of the committee, the minority, who are following, apparently, the gentleman from South Dakota in going ahead and leaving subdivision (b) out of the bill, have not quite taken into consideration the provisions of the general law that allow the President to entirely emasculate the Bureau of Pensions, but I believe that the veterans of the Civil War and their dependents, the veterans of the Spanish War and their dependents, are still entitled to have one bureau of this Government especially to administer to their needs. [Applause.]

Mr. STAFFORD. Mr. Chairman, I rise in opposition to the amendment. It is difficult for me to appreciate the studied and consistent opposition of one of the leaders, if not the entire membership of the Committee on Appropriations, to this scientific proposal to try and coordinate the activities of the Government in the administration of the veterans' affairs.

The gentleman from Michigan was one of the leaders who attempted to emasculate the bill, and probably succeeded for the time being by aiding in striking out paragraph (b) of section 1.

Now he wants to go further and destroy one of the high purposes of this bill.

Mr. CRAMTON. It would be agreeable to me to restore paragraph (b) if my amendment carries.

Mr. STAFFORD. Yes; the gentleman is only concerned in retaining the Bureau of Pensions. That seems with him to be sacrosanct. Everybody, except apparently the gentleman from Michigan, knows that the work of the Bureau of Pensions is diminishing. In a few years there will be little work for the Bureau of Pensions. As far as the old soldiers are concerned, the work is being fast concluded. There may be some as to the widows, and especially those widows who have married old soldiers late in life.

There will also be some work for the Spanish-American War veterans, but the hearings before the committee in the consideration of this bill show that 85 per cent of the work of the Veterans' Bureau has become static. With that condition as to World War veterans, what argument can be advanced against coordinating and combining the work of these two bureaus. I have gone through fights where it has been difficult in years back to remove even pension agencies situated throughout the country, one of them in my own city of Milwaukee, and one in Indianapolis—and this was some 25 years ago—at a time when we paid these pensioners through these agencies. We had then the same character of stand-pat opposition—against any reform in abolishing these expensive and unbusinesslike pay agencies. We have now a very similar condition, except that we have the Committee on Appropriations attempting to thwart a scientific

proposal of coordination of activities recommended by the President of the United States. The major argument advanced by the protagonist is that the salaries paid in the Bureau of Pensions are less than the salaries in the Veterans' Bureau. If we are paying niggardly salaries in the Bureau of Pensions, let us increase them. [Applause.] From my reading of the hearings and the report on this bill we should coordinate these activities and should establish an administrator of veterans' affairs who shall have jurisdiction not only of the administration of pensions being paid in diminishing numbers, to Civil War veterans and their widows, and to Spanish-American War veterans and their widows, but also the management of the national soldiers' homes and the management of the Veterans' Bureau.

Mr. ABERNETHY. Mr. Chairman, will the gentleman yield?

Mr. STAFFORD. Yes.

Mr. ABERNETHY. Does not the gentleman think the Veterans' Bureau has all it can attend to without taking over the Pension Bureau?

Mr. STAFFORD. Eighty-five per cent of the cases in the Veterans' Bureau to-day are static. We want a responsible head to advise what work shall be transferred to the Veterans' Bureau and what work shall be transferred to the Pension Bureau. As a scientific accounting system this bill can be defended in toto; but here we find gentlemen trying to emasculate it, first by striking out subsection (b), because seemingly they have a feeling that the rights of some old pensioner may be affected, when the rights of the pensioners are not to be invaded at all. Perhaps the personnel of the Pension Bureau might be invaded, but the rights of the Civil War veterans and the Spanish-American War veterans will not be affected in any way at all. They will continue to get their vouchers every month.

Mrs. ROGERS. Mr. Chairman, I move to strike out the last three words. I rise in opposition to the amendment. I am very anxious not to have this Congress adjourn before passing this extremely constructive act for our disabled veterans. At the beginning of the year I was not at all sure that I was in favor of this measure, but after careful study, after hearing the arguments for and against the bill, to my mind there is but one answer. Why not create this bureau, why not create the position of administrator of veterans' affairs, and take the good that is in each department and consolidate the departments for the welfare of the veterans in order that they may be given better service? I have inspected a good many of the Veterans' Bureau hospitals and soldiers' homes all over the country. I know that the national soldiers' homes have had experience in the domiciliary care of our veterans, and I know that they can do it more cheaply than can the Veterans' Bureau. We need their experience in domiciliary care.

I know that the Veterans' Bureau hospitals, on the whole, provide very much better medical and surgical care for our veterans, and I know that the food is very much better, because I have eaten it in all of the hospitals and soldiers' homes which I have inspected. Take the two, put them together, and I believe you will have more adequate care for the disabled veterans. How can you refuse to do what is going to be of advantage to the disabled? We need the extra domiciliary beds and the extra hospital beds which this consolidation would give us for our disabled men. Since 1919 the Congress of the United States has authorized the Veterans' Bureau to expend over $104,000,000 in hospital construction, and our subcommittee on veterans' hospitals is now considering bills calling for an additional $30,000,000 appropriation.

Mr. CRAMTON. Mr. Chairman, will the gentlewoman yield?

Mrs. ROGERS. Yes.

Mr. CRAMTON. Of course, my amendment does not involve the question of hospitals at all. That consolidation will continue.

Mrs. ROGERS. The gentleman is perfectly willing to have that?

Mr. CRAMTON. Oh, yes. I have no objection to that.

Mrs. ROGERS. Does the gentleman think for one minute that the Pension Office knows anything practically about veterans' compensation or the work that the Veterans' Bureau does at the present time? It is highly intricate.

Mr. CRAMTON. But I am not asking that, and that is why I think they should be left distinct. Their fields are entirely different. My amendment proposes only to take the Bureau of Pensions out of this proposed consolidation and to continue the consolidation as to the Veterans' Bureau and hospitals to which the gentlewoman refers.

Mrs. ROGERS. Does not the gentleman think it is important to have the Pension Bureau together with the other? We are all coming to pensions for veterans of all wars one of these days.

Mr. CRAMTON. I am unable to see any reason for it.

Mrs. ROGERS. I see the greatest possible reason why this bill should become a law. Veterans' relief has been my work since 1917, all day, and sometimes all night until I came to Congress in 1925 and a part of every day since that time.

Mr. CRAMTON. But the gentlewoman is speaking of hospitals.

Mrs. ROGERS. I do not think it is possible for the Veterans' Bureau to absorb the Pension Bureau or for the Pension Office to absorb the Veterans' Bureau. I think we should have a new department; the administration of that department will not be, in my opinion, the present head of any department or bureau. It will be a new man.

Mr. CRAMTON. But I am not speaking——

Mrs. ROGERS. The gentleman will have to excuse me; I am sorry. I can not yield further. It will be a new man who can and will consolidate all of the different bureaus, and I believe that in this country of ours there can be found a man who has the ability to take what is good in the different departments and work out a practical plan for veterans' relief. To do so he must have control of all veterans' activities in order that he may have the whole picture before him. Why should we spend more than we need to for our veterans' care in administration? We want to spend wisely, intelligently; we want to give them the best that we have. Saving in overhead costs may mean more money in compensation to the veteran. You can preserve the good in the different departments and weed out the bad. We have extremely able men in the United States, and surely the President can find one to serve as administrator of veterans' affairs who will be able to administer wisely the business of our veterans. I have heard a good deal of criticism of the different heads of the bureaus. I see nothing in this bill that suggests that any present head of any bureau shall be the administrator who would be created under this bill.

I do beg of you to pass a bill which can become a law. On Thursday last we passed a bill which we all know can never become a law, and it makes one's heart ache to feel that it was really just fooling the disabled veterans. I do want one bill passed that is to my mind an intelligent step in the right direction. [Applause.]

Mr. GASQUE. Mr. Chairman and members of the committee, we have gotten into a mix-up here this morning.

I want to call your attention to this fact that I knew that we were drifting into this situation when this bill was reported. I want to call the attention of the chairman of the committee to the fact that I made the suggestion when this bill was reported that it would bring about just what has happened on the floor. This bill was never properly reported out of the committee.

I want to say to the gentleman from Michigan [Mr. CRAMTON] that I have not fallen for anything. I have said from the beginning of my remarks that I favored a consolidation of the veterans' activities. I believe they ought to be consolidated. The Pension Bureau and the Veterans' Bureau are doing the same kind of work in the very same way in many instances to-day. There are a whole lot of these activities that ought to be consolidated. One man could attend to the business just as well as half a dozen are doing now in many instances. In this bill we are not considering, we are not approaching, the matter in the proper way. That is why I made the motion to cut out subdivision (b) of the first section. We are told by veterans and it was represented to us in the committee that the veterans of all wars, the representatives of the soldiers' homes, and everybody else that they favored consolidation. If we are legislating for the veterans and trying to do something that they want done, the bill they suggested is the bill that ought to be before the House to-day. I mean the original bill.

Mr. KNUTSON. What kind of a bill was that?

Mr. GASQUE. It was a bill very much like the one we have now, but it did not have in it subsection (b). They were in unanimous agreement in favor of the bill presented by Mr. Means, although we were told later that some of them said they would rather have the original bill. Hearings were not held before the committee on the bill that is now before the House. The hearings were had on a different bill.

Mr. KNUTSON. Before the committee?

Mr. GASQUE. Yes; before the committee.

Mr. KNUTSON. I am surprised at the gentleman's remark. We have been led to believe heretofore that extensive hearings were held on this bill. It seems now that it was an entirely new bill. Is the gentleman from South Dakota trying to flimflam the House?

Mr. WILLIAMSON. Does the gentleman mean to say I ever made such a statement as that? I did not.

Mr. KNUTSON. I am taking the gentleman's word for it.

Mr. GASQUE. The bill, on which we had extensive hearings, was to consolidate all these activities into the Veterans' Bureau.

Now, I believe the bill as we have it, with this subsection taken out, comes about as near being a bill such as these gentlemen agreed upon as we can get. I would like to see the bill in different shape, but I feel that we ought to make a start and do something that would eventually bring all these agencies under one head.

Mr. ABERNETHY. Will the gentleman tell me the various organizations that are for this bill in its present form?

Mr. GASQUE. I can not give you that information. I have been told that the World War veterans' organization and the American Legion are for it. I was told that the Spanish-American War Veterans were opposed to it.

Mr. LAGUARDIA. What the veterans are interested in is in the check and not the administrative details.

Mr. GASQUE. If the Johnson bill which came before us the other day contained in it proper administrative features, we would not have had a good bill. That is what we need. That is the reason why we favor the Pension Bureau, because we get better administration of affairs there.

Mr. KNUTSON. The gentleman has given considerable study to this subject. Does the gentleman believe we are going to save any money by this proposed consolidation?

Mr. GASQUE. Not at once, but eventually I believe we shall save money.

The CHAIRMAN. The time of the gentleman from South Carolina has expired.

Mr. GASQUE. May I have five minutes more?

The CHAIRMAN. Is there objection to the gentleman's request?

There was no objection.

Mr. GASQUE. It is not my opinion that at present there will be any considerable amount of money saved, but if we consolidate these agencies I believe in a few years hundreds of thousands of dollars will be saved. Of course, we are setting up an administrator at a salary of $12,000 a year and several other agencies. But even so, if the administration is as it should be, we will save a good deal of money in future years.

Mr. MOORE of Virginia. Mr. Chairman, will the gentleman yield?

Mr. GASQUE. Yes.

Mr. MOORE of Virginia. Will the gentleman state whether in his opinion the administration of these various bureaus will be improved in any way by the passage of this bill? Does the gentleman think from his consideration of the subject that there will be anything gained in economy or efficiency next year or the year after, if this bill is passed?

Mr. GASQUE. I can not say that there will be any improvement immediately, but I think in a few years there will be. I can not, of course, prophesy as to the future.

Mr. MOORE of Virginia. Does not the gentleman think, in the situation we have here now, that the wise thing to do would be to send this bill back to the committee for reconsideration, in the hope that something may be framed that would give us some better assurance than it affords?

Mr. LAGUARDIA. It seems to me a simple proposition, when you have simply the Veterans' Bureau and the soldiers' homes and the Pension Bureau to consolidate.

Mr. O'CONNOR of Oklahoma. Are we legislating for the veterans who now receive the money and those on the pay roll or for the entire people?

Mr. GASQUE. I think we should legislate for the veterans, the entire people, and for the Federal Government.

Mr. O'CONNOR of Oklahoma. Do you think this legislation would put anyone off the pay roll if we perchance should pass it?

Mr. GASQUE. I can not say.

Mr. PALMER. Mr. Chairman, will the gentleman yield?

Mr. GASQUE. Yes.

Mr. PALMER. Did I understand the gentleman to say that the three departments are functioning all right at the present time?

Mr. GASQUE. I did not say that.

Mr. PALMER. Your Pension Bureau has been functioning for over a hundred years and is functioning all right, is it not?

Mr. GASQUE. I think so.

Mr. PALMER. Does the gentleman believe it is good policy to start out on a plan of destruction and to destroy a bureau that we know has been successfully conducted for more than a hundred years?

Mr. GASQUE. I do not.

Mr. PALMER. Does the gentleman not think it would do the veterans a great injustice to consolidate these departments?

Mr. GASQUE. I want to say that I agree with the gentleman that the Pension Bureau has been functioning, as far as I know, efficiently for 100 years. I would dislike to see anything disrupt it at the present time. However, I want to go further and say that there are functions being performed by the Pension Bureau and the Veterans' Bureau to-day in the same field, where men are overlapping in their work, doing the very same work. An examination and investigation of those matters should be made and certain features ought to be consolidated.

Mr. PALMER. I favor anything that will help the World War veterans and all of the other veterans, but the masses of people throughout the Nation are to be considered and not a few salaries and a few officers. I think it would be a mistake to destroy the Bureau of Pensions.

Mr. GASQUE. As far as I am concerned, I shall not vote to do anything that will destroy it.

Mr. COLTON. Will the gentleman yield?

Mr. GASQUE. I yield.

Mr. COLTON. I am sure the gentleman will agree with me that that matter was carefully considered and there was no thought on the part of anyone of injuring the efficiency of any department or bureau, but, on the contrary, we believed that we would greatly increase the efficiency of all of the bureaus.

Mr. GASQUE. In answer to the gentleman's question I want to say that representatives of the old soldiers' homes, the Spanish-American War veterans, and the World War veterans came before us, urging that we do consolidate, but I want to say that they did not agree upon a bill like the one brought in.

The CHAIRMAN. The time of the gentleman has again expired.

Mr. WILLIAMSON. Mr. Chairman, I ask unanimous consent that all debate on the section and all amendments thereto close in 25 minutes.

Mr. KNUTSON. Mr. Chairman, I have an amendment to offer.

The CHAIRMAN. The gentleman from South Dakota [Mr. WILLIAMSON] asks unanimous consent that all debate on this section and all amendments thereto close in 25 minutes. Is there objection?

Mr. KNUTSON. I object.

Mr. WILLIAMSON. Mr. Chairman, I move that all debate on this section and all amendments thereto close in 25 minutes.

Mr. CRAMTON. Mr. Chairman, if the gentleman from South Dakota [Mr. WILLIAMSON] will withhold his motion for a moment, as far as I am concerned, I am willing to have the debate on my amendment close now. I would prefer it, as a matter of fact, but I think that other gentlemen who have important amendments to offer should have a fair opportunity to present them.

Mr. WILLIAMSON. If gentlemen would let me see their amendments so that I would know what they were, I might consent to it.

Mr. CRAMTON. Even if they do not let the chairman see them, I think they have a right to offer them and debate them. I imagine the great controversy is on this one section.

Mr. WILLIAMSON. Mr. Chairman, I will modify my motion to move that all debate on this section and the current amendment close in 25 minutes.

Mr. ABERNETHY. Will the gentleman yield?

Mr. WILLIAMSON. I yield.

Mr. ABERNETHY. Would the gentleman make that five minutes more?

Mr. WILLIAMSON. Mr. Chairman, I will withdraw the motion if I may.

The CHAIRMAN. Without objection the gentleman from South Dakota [Mr. WILLIAMSON] withdraws his motion.

There was no objection.

Mr. WILLIAMSON. Mr. Chairman, I ask unanimous consent that all debate upon this section and all amendments thereto close in 45 minutes.

The CHAIRMAN. The gentleman from South Dakota [Mr. WILLIAMSON] asks unanimous consent that all debate on this section and all amendments thereto close in 45 minutes. Is there objection?

There was no objection.

Mr. SCHAFER of Wisconsin. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I rise in opposition to the pending amendment submitted by my distinguished friend, the gentleman from Michigan [Mr. CRAMTON].

The Committee on Expenditures in the Executive Departments held extensive hearings for the past two years on legislation having for its purpose the consolidation of all veterans' activities. While the bill as reported by the committee does not compare word for word with the original bill upon which hearings were held, I do not believe it is the practice of the House, or even the practice of the Committee on Pensions, whose chairman [Mr. KNUTSON] raised such a hullabaloo about not having

hearings on the particular bill before us, to bulletin and hold new hearings every time they adopt an amendment changing a word, dotting an i, or crossing a t, in a bill which such committee is considering.

Mr. Chairman, extensive hearings before the committee indicate that the Veterans of Foreign Wars, the Disabled American Veterans, and the American Legion were fairly and squarely in favor of consolidating all veterans' activities under one independent bureau.

The gentleman from Michigan [Mr. CRAMTON] speaking in behalf of his amendment stated that it should be adopted because the veterans of the Spanish-American War and the veterans of the Civil War should have an independent agency such as they now have—the Pension Bureau. Refer to page 107 of the hearings. Mr. Rice W. Means, a former Senator from Colorado, testified as follows:

I have authority from 42,000 survivors of the Civil War—written authority—to speak for them before this committee. I am authorized to officially represent the United Spanish War Veterans. As to those two they have expressed themselves in their conventions as being favorable to a joining of all agencies extending relief to veterans of this country under one head. They have both, by resolution, favored the placing of these agencies under the Secretary of the Interior. I don't believe they are married to that particular procedure at all.

On page 62 of the hearings on H. R. 16722, Mr. Means testified further as follows:

First, there ought to be an independent agency to be called the "department of veterans' activities" or "department of veterans' relief."

Further on that page Mr. Means answered this question, propounded by Congressman COLTON:

Mr. COLTON. Do you advocate a consolidation under an existing bureau or the creation of a new department to handle all of these activities?

Mr. MEANS. I advocate the creation of a new department to handle these activities.

Mr. CRAMTON. If the gentleman will yield, to my mind there is a great difference between the creation of a new department headed by a cabinet officer and the setting up of a vast independent bureau, with the possibility of a repetition of the scandals we have already experienced under the Forbes régime.

Mr. SCHAFER of Wisconsin. The gentleman from Michigan did not listen to the testimony I read and he has not read the testimony, because Mr. Means testified, on page 62 of the hearings, that there ought to be an independent agency to be called the "department of veterans' activities." This bill provides for an independent agency to handle all veterans' affairs. The exact name is not the same as suggested by Mr. Means, but in substance and principle it is the same activity which he suggested.

Mr. WILLIAMSON. Will the gentleman yield?

Mr. SCHAFER of Wisconsin. Yes.

Mr. WILLIAMSON. The bill submitted by Mr. Means——

Mr. SCHAFER of Wisconsin. Is in principle practically the identical bill reported out by the Expenditures Committee and now under consideration, the allegations of the devoted disciples of the Commissioner of Pensions to the contrary notwithstanding. [Applause.]

Mr. WILLIAMSON. And sets up a separate department, does it not?

Mr. SCHAFER of Wisconsin. Absolutely. I believe that the Commissioner of Pensions and the Secretary of the Interior would be rendering a better service to the country and to the President of the United States who appointed them if they would devote the time which they have been devoting to opposing this consolidation bill to some of the other duties of their offices. [Applause.]

The CHAIRMAN. The time of the gentleman from Wisconsin has expired.

Mr. FORT. Mr. Chairman and gentlemen of the committee, this amendment goes to the heart of the bill in more senses than one. Both of the dominant political parties in this country repeatedly in the platforms on which they have gone to the Nation for election have favored the consolidation of Government departments.

I quote now from the last Democratic national platform:

(a) Businesslike reorganization of all the departments of the Government.

(b) Elimination of duplication, waste, and overlapping.

(c) Substitution of modern businesslike methods for existing obsolete and antiquated conditions.

Similar language is to be found in the platforms of both parties for the last eight years at least.

Modern businesslike methods mean a concentration of like functions and authority in the hands of one man where possible. There are no business organizations in this Nation today which would tolerate any such condition as exists in the Government of the United States where similar functions relating to a like subject matter are scattered in from 3 to 15 different branches of the Government. If we are to be true to the pledges made by our parties, gentlemen on both sides of the aisle should vote for a concentration of these and all other like activities in the Nation under appropriate heads.

The argument is made that this will result in an increase of expenses because the Pension Bureau, it is said, is the most efficient of any of these organizations. If that be true, and the man who is placed at the head to administer all of these like activities is fit for the job, he will adopt the Pension Bureau way of handling such similar functions as are now in the Veterans' Bureau. If he finds a more efficient and better way in the Veterans' Bureau than some method that is in use in the national soldiers' homes, he will use that method. But it is only by giving to one man the point of vantage from which he can view the relative efficiency of methods that you can hope to find which is the most efficient, the most economical, and the most advantageous.

Nobody on this floor or in this Nation knows what may be the next turn in veterans' legislation. Nobody can even guess what form of legislation we or some subsequent Congress will adopt on this subject. But whatever its form, I challenge any Member of this House to deny that a competent administrator in charge of all forms of veterans' legislation will be a better guide as to the method of administration than three segregated and separated administrators, each operating under his own old system which may or may not be efficient.

If the gentleman from Michigan will permit, it is because in part it may be true that the Bureau of Pensions does some things more efficiently that I would like to see it in the same general branch of the Government with those branches which may be operating less efficiently. I have sufficient confidence in the new blood I believe will be at the head of this whole organization to believe that the man named to the job of rendering the whole administration efficient will adopt the best methods which he finds in each of the subsidiary branches.

Mr. CRAMTON. The gentleman knows there is no question who that will be. It will be the present head of the Veterans' Bureau.

Mr. FORT. If the gentleman pleases——

Mr. WILLIAMSON. We deny that.

Mr. CRAMTON. Everybody denies that on the floor but admits it in private.

Mr. WILLIAMSON. No; we do not.

Mr. FORT. The gentleman has made a statement attacking my personal veracity, if the Chair pleases——

Mr. CRAMTON. Of course, the gentleman knows there was nothing of that kind.

Mr. FORT. Will the gentleman withdraw his remark?

Mr. CRAMTON. I will disclaim any such purpose.

The CHAIRMAN. The time of the gentleman from New Jersey has expired.

Mr. ABERNETHY. Mr. Chairman, I am always willing to do anything I can in the interest of the veterans, but I find myself in a very peculiar situation here, because there is so much division on this very important question. We have a great division of opinion on the Republican side of the House and we have a great division on the Democratic side of the House and it strikes me this is too important a matter to push through rapidly. It occurs to me the best place to send this bill at the present time is back to the committee to the end we may work out something comprehensive, with a view of all getting together and bringing out something that we can support with more unanimity.

Mr. WILLIAMSON. Will the gentleman yield?

Mr. ABERNETHY. Yes.

Mr. WILLIAMSON. I may say to the gentleman that the committee has had this matter under consideration for two years and if the gentleman will take the time to look at our hearings——

Mr. ABERNETHY. I have looked at the hearings, but I find the bill was introduced on March 10, 1930, and reported back to the House on March 21, 1930, and you are consolidating three or four very important activities of the Government.

My friend here, for whom I have great respect, has a great deal to do with the Interior Department, the gentleman from Michigan [Mr. CRAMTON], and he is fighting this bill. He has responsible connections with the President and we do not know how the President stands on this bill, and even if we did, I am not sure we would follow him in this matter.

Mr. WILLIAMSON. Will the gentleman yield further?

Mr. ABERNETHY. Yes.

Mr. WILLIAMSON. Let me say to the gentleman that the bill the gentleman is holding in his hand is simply a bill that has been amended by the committee. In other words, the committee amended the bill which it had been considering for a long time and reintroduced the bill with the amendments so as not to have a lot of committee amendments in the bill.

Mr. ABERNETHY. Of course, the gentleman will give me a little more time——

Mr. WILLIAMSON. No; I can not do that.

Mr. ABERNETHY. Then do not take up all of my time. The gentleman is chairman of the committee and has control of the time.

Now, when I have to deal with the Veterans' Bureau to take up a matter, first I have got to go to Charlotte, N. C.; then I have to appeal from Charlotte to New Orleans, and then back to Washington. This is with respect to Veterans' Bureau. I can go to the Bureau of Pensions and get action immediately.

If you are going to improve conditions, well and good. I want to say on the floor of the House here, I think the head of the Veterans' Bureau, General Hines, is a very high type of man——

Mr. SCHAFER of Wisconsin. Will the gentleman yield?

Mr. ABERNETHY. No; I can not yield, because you have taken up all the time on this matter and I have only a few minutes left.

I really think the place this bill ought to go is back to the committee, so we can make a further study of the matter and all of us get together, because, gentlemen, I want to do something for the veterans, but it looks to me that with all this tangled situation we are not going to aid the veterans but rather hamper them. This is the way I feel about it.

I wish I knew what veterans' organizations are for the bill, if any, and who are against it, but I can not find anybody here who can tell me. I know there are no designs on the trestle board and we are in great confusion in the temple and do not know what to do. [Laughter and applause.]

The CHAIRMAN. The time of the gentleman from North Carolina has expired.

Mr. COCHRAN of Missouri. Mr. Chairman and members of the committee, I am supporting this bill as it came from the committee because it is a good bill and will be beneficial to the veterans as well as the Government. Both in the last Congress and the present Congress hearings were held and we sat for days listening to the views of Government officials, as well as members of veterans' organizations.

No one was denied a hearing and no one was limited as to time. Everyone had a fair opportunity to present their views. The President wants legislation to bring veterans' activities under one head, and this bill is what he desires.

I think it is most unfair for Members of the House, who should know better, to continue to compare the work of the Pension Bureau with the work of the Veterans' Bureau. Everyone who has had any experience in handling veterans' claims before the Pension Bureau knows that the great majority are claims which are automatically allowed when the man proves his service and the examination discloses a disability, regardless of whether he was hit by a street car or fell from a building, or is disabled by a disease, but under the World War veterans' law the Congress required that the disability be of service origin or subject to the presumptive section and there you find an entirely different situation. If the record of the War or Navy Department does not disclose treatment for the existing disability while in the service the veteran must prove his claim that his injury or disease is the direct result of his service. The burden of proof is on the veteran, and there are delays in securing evidence that will enable the bureau to act favorably on the claim. Until the Congress grants pensions to World War veterans, which I hope it does soon, this condition will continue. Therefore Members should not advance the argument that they can get immediate action at the Pension Bureau but are subject to long delays at the Veterans' Bureau. You and you alone can correct this situation by passing the disability pension bill for World War veterans.

If you have a case under the general law and prosecute it before the Bureau of Pensions, you will find you have just as much trouble as you do in handling a case before the Veterans' Bureau. I have had such an experience within the last week. I was before the Pension Bureau the other day with a general law case, and I was amazed to find that the examiner had denied the claim, because he stated the disability existed prior to the service. I could find nothing in the file to show that this man had the disability—tuberculosis—prior to the time he entered the service. He had several enlistments, and when the time came for discharge was held in the service for the convenience of the Government to determine if he did have tuberculosis. We all know the military officers are not taking men into the service who have tuberculosis. When I complained the papers were reviewed and now have been sent to the field for special examination. Try and get a case closed in the Pension Bureau that goes to the field and you will find it takes several months.

But aside from this, the opportunities will be present to effect economies and to improve the efficiency of the Veterans' Bureau and to expedite the handling of all claims and hospitalization affecting all disabled soldiers.

The bill has the indorsement of all the veterans' organizations, and I do not think this House should fail to give the President the bill he wants to reorganize or consolidate governmental agencies administering laws affecting veterans of all wars.

Mr. CRAIL. Will the gentleman yield?

Mr. COCHRAN of Missouri. I yield.

Mr. CRAIL. I am a friend of the veterans and I am not asking this question in a hostile way, but for information. I would like to know if there is a good reason, and if so what the reason is, why the veterans' affairs should not be under some executive department of our Government.

Mr. COCHRAN of Missouri. The outstanding reason I will say to the gentleman from California, is that practically 25 per cent of Government expenditures goes for the care of veterans and it is too big a job to put in the hands of a Cabinet officer who has many other activities to look after. [Applause.] We want one man to look after the veterans and that one man to be held responsible and if he does not take care of the veterans, the Congress of the United States and the President, friends of the veterans, will see that he does properly administer the laws or will get a man who will.

Mr. CRAIL. That does not appeal to me as a very good reason. During the last campaign I heard one of our candidates for President proclaiming loudly on the radio that $556,000,000 of our Government's money was expended and did not fall within the jurisdiction of any executive department, and that this had increased from approximately $5,000,000 to this great sum within less than 10 years, and both parties claimed that the work could be consolidated and that the matter should come under the jurisdiction of an executive department.

Mr. COCHRAN of Missouri. Let me answer the gentleman by saying that this set-up provides the administrator is directly responsible to the President of the United States, and therefore should appeal to the gentleman. The gentleman need have no fear as the veteran's interest will be carefully protected.

Mr. CRAIL. That might be said with reference to a Cabinet officer.

Mr. COCHRAN of Missouri. In the campaigns and in national conventions we all favor reorganization of the Government agencies and we should carry out the promises made at that time.

We should not condemn the Veterans' Bureau and those administrating the law when the Congress itself is responsible for the law.

Men who served in the Regular Establishment complain about the general law under which they are pensioned, but the cases are so few in comparison with the number handled by the Veterans' Bureau that you do not get the complaints.

Cases appealed to the Assistant Secretary of the Interior when rejected by the Commissioner of Pensions are not decided the same day. Sometimes it takes several months; always several weeks. I am sure members who have handled cases of this character before the Pension Bureau will agree with me.

Cases sent to the field by the Pension Bureau likewise take months. The examiners travel from place to place, and where the veteran has lived in various parts of the country the papers must be sent to different examiners. So do not compare the administration of claims in the Pension Bureau—those affecting Spanish and Civil War veterans—with claims pending before the Veterans' Bureau. I say again it is not fair. Compare the cases filed under the general pension law and you will see the delay in getting a final decision in the Pension Bureau is experienced the same as you find in the Veterans' Bureau.

I hope the amendment will be defeated and the bill passed as it came from the committee, and I speak as a friend of the veteran, one who has fought their battles before the Pension and Veterans' Bureaus for years. I would do nothing to harm them.

Mr. GARBER of Virginia. Mr. Chairman, I am very glad, gentlemen of the committee, that we are of one accord on one thing and that is that we are all deeply interested in doing the thing that will benefit the veterans most. It seems to me that this discussion has revolved around two distinct aspects—one is the business consideration and the other is a matter of sentiment, pure and simple.

Mr. Chairman, it seems to me that there is no just reason why we should not, in undertaking to legislate for the veterans, consider all of the well-recognized principles of business that we put into every business organization in the country where affairs are well administered.

What reason can there be, gentlemen, for not consolidating the various veterans' activities? Why, we are told that the Pension Bureau is such a wonderfully efficient bureau, and I agree with that. But, gentlemen, we should understand that the Pension Bureau and the Veterans' Bureau and the soldiers' homes are all Government agencies. Is there anything holy about the Pension Bureau that we should not draw that into a consolidation that will insure unification of administration and guarantee economy and efficiency?

I can not understand the position that some are taking, that because the Pension Bureau is administered more efficiently than the Veterans' Bureau, as has been claimed—and I am not arguing about that—I can not understand why they take the position that if we consolidate and place them under one administrative head that all the defects will come into the administration of the consolidated activities and none of the virtues of the Pension Bureau will be carried over into the administration of the new department.

Are they not all agencies of the Government? Shall one be hallowed and favored over the other? Not at all.

I want to say that I am not in sympathy with the sentiment expressed here that we should legislate in relation to the personnel of any department or bureau. It is not sound legislation that we should come in here and enact legislation to fit an individual, just because he is at the head of one of our bureaus. Legislation should be confined to sound principles of business and economical administration.

For that reason I say that is the sentimental side that has been discussed a great deal. It has been argued that we should not consolidate, because the Veterans' Bureau, perchance, will absorb the Pension Bureau. It is not a case of one bureau absorbing another; it is merely a matter of bringing all together under one administrative head.

Now, the question has been asked over and over again wherein lies the economy? I can not follow that in the few minutes that I have, but only to indicate in a general way. For example, is not the hospitalization of your veterans of the Civil War and the veterans of the Spanish-American War, the veterans of the World War, the same identical thing? I say to you that the hospitalization and the care of the sick of the various wars has the same identical principle involved, and, therefore, they should be under one administrator, one board, and not three boards. [Applause.]

Mr. LAGUARDIA. Mr. Chairman, the statement has recently been made that the bill is very involved, complicated, and intricate. The bill, on the contrary, is very simple. It seeks to take the Pension Bureau, now under the Department of the Interior, the soldiers' homes, now administered by a board of volunteer governors, the Veterans' Bureau, an independent office, and consolidate them into one independent agency of the Government. That is all there is to it—to have the three bureaus consolidated under one head.

If the amendment offered by the gentleman from Michigan, to eliminate the Pension Bureau is adopted, we might as well send the bill back to the committee, because there is no sense in simply consolidating the Veterans' Bureau with the soldiers' homes.

Mr. GASQUE. Mr. Chairman, will the gentleman yield?

Mr. LAGUARDIA. In a minute. This is a bill that will consolidate these three different bureaus and that is all the bill does. It does not change the pension law, it does not change the veterans' compensation, it does not change the condition for admission into the soldiers' home. It simply brings the three together under one executive head. If you eliminate one of the three, it vitiates the bill. I yield now to the gentleman.

Mr. GASQUE. I understood the gentleman to say that when we struck out subsection (b) we might just as well have sent the bill back to the committee.

Mr. LAGUARDIA. I am in hope of reinserting section (b). I believe that when we get into the House we will put it back into the bill.

Mr. GASQUE. The gentleman thinks that the bill will be a failure if we leave subsection (b) out of it?

Mr. LAGUARDIA. I think that the bill will be very much stronger with subsection (b) left in. That is all there is to this bill. It is bringing these three different bureaus now having separate distinct jurisdiction over three sets of veterans and putting them under one head. All this talk about the Spanish War veterans and Civil War veterans being in favor of the Pension Bureau is idle. What the veteran is interested in is the results, in getting his pension check every month. This will expedite the facilities for the veteran in getting speedier action and better service. If we can reduce overhead expense that, too, is for the benefit of the veterans.

Mr. FITZGERALD. Mr. Chairman, I move to strike out the last four words. I am very strongly in favor of this bill, fundamentally because I believe that our whole administrative system of Federal Government needs reformation, and that this bill is a move in the right direction. We have 10 departments of our Government, and more than 30 outside agencies which are not coordinated. I can not take the time now to discuss this patchwork, this medley, this haphazard system of unscientific organization which would not be tolerated in private business, and ought not to be tolerated by us who are charged with the responsibility for its reform. But that aside, when this bill was first proposed, it was offered as H. R. 6141, and on behalf of 1,500 veterans of the Central Branch of the Soldiers' Home at Dayton, Ohio, I filed a protest against it (see p. 4551, CONGRESSIONAL RECORD, February 28). It was suggested that this protest was brought about by the board of managers, those in control, who wanted to save for themselves the administration of the affairs of the Soldiers' Home. Be that as it may, when the committee had gone more thoroughly into the situation and brought out the bill which we now have before us, I submitted the bill to those who had sponsored the protest, and I shall read now the reply of the commander of the Spanish-American War Veterans camp, of which it is my privilege to be an honorary member:

MAJOR WM. MCKINLEY CAMP NO. 91,
DEPARTMENT OF OHIO,
Dayton, Ohio, March 20, 1930.

Hon. ROY G. FITZGERALD,
House of Representatives, Washington, D. C.

DEAR MR. FITZGERALD: Have received a copy of H. R. 10630 along with a copy of Mr. Williamson's letter of March 13, addressed to you and forwarded to me, and I want you to know that I thank you very kindly, for I have, through studying the bill, became much more familiar with it than I would otherwise have been. I personally think this is very fair bill and just what should be enacted. There is nothing apparently wrong with a bill "authorizing the President to consolidate and coordinate governmental activities affecting war veterans." And I think all veterans of all wars will see this in the same light as I.

I note in Mr. WILLIAMSON'S comment on H. R. 10630 that, "Some fear has been expressed that the proposed set-up might affect the Spanish-American soldiers adversely." But the remainder of that paragraph very ably clinches that argument. I do not believe that the United Spanish War Veterans will object to the proposed consolidation. The thing that is objected to, not only by the Spanish-American soldier but the World War soldier as well, is the turning over of the homes to the Veterans' Bureau. But everyone here seems to be agreeable to the bill H. R. 10630.

M. A. HATHAWAY,
Commander Camp No. 91.

Mr. Chairman, it is of great importance that the soldiers' home situation be looked into. The Soldiers' Home Board of Managers is not exactly a voluntary board, as suggested by my good friend from New York [Mr. LAGUARDIA], but is a board elected by Congress. Congress has shown so little care of the soldiers' home that although the term of office of the president of the Board of Managers expired more than five years ago, no attempt has been made by this House to fill the position. The members of the board, except the president, serve without pay. No matter how patriotic or how willing they are, we all know the kind of service that can be expected from men who must serve without pay, who have only their expenses paid, when they must sacrifice much time from their personal affairs to travel from Maine to California and all over the United States. The president of the Board of Managers gets a salary of $4,000 a year. He is a splendid, an efficient man, and earns much more. He gives virtually all of his time to this work, and I do not believe we shall make any saving if this instrumentality of our Government, the Board of Managers of the Soldiers' Homes is consolidated with any other, because he is less properly and adequately paid than perhaps any man who is charged with a like responsibility under our Government. He deserves to be paid more, and I can say this very freely, because he belongs to the opposite political party to that to which I belong myself. The conditions in the soldiers' home are unsatisfactory. The branches are overcrowded and the hospitals, the food, and living conditions are much below the standard that we may expect from the organization proposed by this bill. I sympathize with those who do not want the present admirable administration of the Pension Bureau interfered with. It seems a model of efficiency and zeal for the veteran. It gives Members of Congress as little trouble as any bureau with which we have to deal, and I am confident that its usefulness and popularity will not be impaired by this bill.

Mr. Chairman, I ask unanimous consent to extend my remarks in the RECORD by including correspondence between a veteran complaining about the soldiers' home conditions, the president of the Board of Managers, and myself, and a letter from a welfare worker.

The CHAIRMAN. The gentleman from Ohio asks unanimous consent to extend his remarks in the RECORD in the manner indicated. Is there objection?

There was no objection.

Mr. FITZGERALD. These letters are: Thomas Eaglin to FITZGERALD, March 22, 1930; FITZGERALD to Gen. George H. Wood, president of Board of Managers, March 26, 1930; General Wood to FITZGERALD, April 3, 1930; Eaglin to FITZGERALD, April 12, 1930; Whiteside to FITZGERALD, March 3, 1930; as follows:

TROOP A, FIRST REGIMENT UNITED STATES CAVALRY,
WAR WITH SPAIN,
March 22, 1930.

Hon. ROY G. FITZGERALD,
Washington, D. C.

DEAR SIR: I am at home in Dayton. Am very sorry to write to you upon this occasion, knowing that you are a very busy man.

I have a serious complaint to make against the management of the Soldiers' Home at Dayton. I was obliged to get out of there, although an invalid myself, on account of a man in the last stages of consumption being placed in a bed beside me, with only space for a chair between our beds and his cuspidor, which he continually coughed and spit in, set under my nose. I have respect and sympathy for a man in this condition, but there is a tuberculosis hospital here with several hundred empty beds, and this man from the mountains of Tennessee showed no respect for others to intrude himself in such a condition on the other members. His looks showed the ravages of the disease and his coughing all night and gasping for breath showed how near he was gone. He was also insanitary in his habits; for 10 days he did not wash out his cuspidor and spit all over the floor and bedclothing. In fact, he was in no condition to take care of himself, but did not want to go to the hospital.

I reported this to Ben Atkinson, the adjutant, as being detrimental to the health of others in the closely crowded unventilated room with the heads of the beds together in the center row, necessitating the breathing of one another's breath, and only room for a chair between the beds in the rows, as well as the annoyance of his coughing all night. He occupied a bed just across the aisle from me at the time I made the complaint, but a few days later a man next to me on the same side went out and this man with consumption was moved over in the bed next to me, obviously in defiance of the complaint I had made.

I refused to sleep beside the man and asked for my discharge. The captain told me he would have it for me the next day. I told him that I was going immediately (1 p. m.), that I would not wait for my discharge and would not sleep beside this sick man. So I demanded my belongings and called for a cab, with the understanding that my discharge would be sent to me. Two hours after I left the home this consumptive was in the tuberculosis hospital. He was in barracks, Company 3, two weeks and they refused to take notice of this until after they had got rid of me. Then he was given a note to go to the general hospital, and when he got there he was held. He was taken back to the barracks in an ambulance in care of both a doctor and a nurse, and from there to the tuberculosis hospital. They usually send a wardman with a patient of this kind, but in this instance they made a grandstand play, knowing by putting me out of the home that I would make a complaint, and they wanted to counteract the story.

There were many others that had made a complaint to the captain about this man, but the captain told them that they were no doctor and that he was running the company and them that did not like it to get out. In this case, the blame falls directly on the captain, H. L. Arney; Ben Atkinson, the adjutant, which I informed several days before; and Major Roberts, the chief surgeon. This consumptive was either put in this barracks to drive out decent, sober members, or spreading the disease to fill up the empty beds in the tuberculosis hospital. There was also another man in the last stages of asthma and bronchial trouble who coughed all night and annoyed the other members and should have been in the hospital.

The bed which I occupied was filthy with oil and grease where a previous member affected with a skin disease had slept and used oil and ointment on his body as a cure for his disease, and the oil had soaked through the sheets on the tick. Many complaints were made against this man using the same bath tub that the other members had to use. No notice was taken to this. The blankets were also filthy dirty, but if you complain about anything like this they put you through the torture process until you have to get out. I have been informed that the bed and blankets which this tuberculosis patient used, Company 3, bed 42, were not fumigated or changed but left for the next man to use.

This outward showing of sanitary regulations around these homes is a farce. I was vaccinated five times in the last four years against my will; all together I was vaccinated about fifteen times, with a large original scar on my arm, while some of the Regulars, with their name on the pay roll for the last 20 years, have never been vaccinated at all. The closed overheated, overcrowded rooms with the windows kept closed, the inhaling of other breaths, some with consumption, catarrh, asthma, all kinds of liniments, sore legs, drunken breaths, unsanitary persons, old pipes, and smoking cigarettes all night can not help but spread disease. It looks like it is managed this way to create sickness and fill up the hospitals. They get twice as much for taking care of hospital patients as other members and feed them less. I was nearly starved to death when I was in the hospital four years ago. About 60 per cent of the hospital patients do not need any treatment, but are kept there for pigeon stools, spies, and to fill up the beds, create jobs for the doctors and nurses, while many hospital cases are left in the barracks to create diseases among the others.

I was not ready to leave the home at the time I was forced out. I have been an invalid for five years, but my ailment is not contagious nor loathsome. I have sciatica and neuralgia and subject to nervous breakdowns, was sunstroke twice in the Army, and am now in my sixty-second year. I was sick for five days in the Ohio Hotel after I left the home on account of the way I was driven out. When I went to the home in December I asked to go to the convalescent barracks, but Ben Atkinson, the adjutant, ordered me sent to Company 10 (assuming a physician's authority).

The barracks were filled up with such drunken fellows that insulted and molested the others that I asked to be transferred. A few days after a man was murdered in Company 10 during a drunken brawl. Last summer a man was murdered in the mess hall at Danville. The way the officials manage these homes creates this hatred among the members. No complaints are allowed to be made. When a member dares to make a complaint he is marked a victim to be forced out through the torture process, and his pedigree follows him to the other homes. This is the result of a masked tyranny which certain members have got to endure.

I was transferred to Company 3. This captain that put the tuberculosis patient next to me had just took charge. The other captain was down in jail in Dayton, arrested with whisky in his automobile. The jail records will show this. He had been on a drunk for a week running the barracks. They are most all like this. It would be interesting for an investigating committee to examine the jail and workhouse records where these homes are located and compare these names with the names on the pay roll of the soldiers' home. Company 3 was the most drunken barracks that I was ever in. Drunken orgies were indulged in all night. The toilet room was used for straining canned heat and drinking bay rum. Sometimes there were as much as two buckets full of empty whisky bottles carried out in the morning. One man, while I was there, was carried in drunk twice in one day and put to bed. He and several others were drunk for three weeks at a time and always a dozen or more were drunk and up at all times at night, cursing, raving, and keeping the others awake. These appeared to be the captain's best friends and the only eligible members to the home. There is no pretense of living by the rules of the home any more. The depraved element which the officials are inclined to favor have got beyond control and the barracks are nothing more than madhouses.

When a petition was passed around some time ago for the members to sign favoring the retention of the present Board of Managers as heads of the homes I refused to sign it. Others signed it because they were afraid they would be put out of the homes if they refused. I feel that I exercised my constitutional rights when I refused to sign this petition for the present Board of Managers to continue in charge of the homes. I felt that a change would be better for the welfare of the members. I have been tortured, insulted, starved, mistreated, and forced to get out of these homes every time I have ever been in one of them, and this is true of many other decent, intelligent, and deserving men that the officials do not want around where they can see too much.

These men of polished learning and political power with great donations in their hands to be spent for the benefit of disabled and old, aged veterans of wars are money mad and elated over their long time in public service. They have forgotten the needs of those they represent; they have set up a machine of masked tyranny against these victims that are in need of mercy. It is with ten times more fervency that I appeal for justice in behalf of those who are in a worse condition than myself, who are without learning and the gift of self-perseverance, but whose hearts were in the right place when the country was in need of their service. They are now forced out of these homes that the good people of the country provided for them.

I would now kindly ask that this information be put into the hands of the proper authorities with a view of a complete change being made in the personnel of these military homes so that honorable, intelligent men who volunteered their service for their country and who bore the brunt of the battles in time of war and in time of peace went back in the channels of industry to do their part in life, who now on account of their age and infirmities need the aid of these institutions can live there in peace, and that these homes be used for the purpose which they were intended for, or else closed up and the worthy and unfortunate be given a pension sufficient to live upon.

Very respectfully,

THOMAS EAGLIN.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., March 26, 1930.

Gen. GEORGE H. WOOD,
President Board of Managers, National Military Home,
Dayton, Ohio.

DEAR GENERAL: I am inclosing copy of a letter which I have just received from Thomas Eaglin, 22 Clay Street, Dayton, Ohio, a veteran of the Spanish War, telling of revolting and loathsome conditions at the soldiers' home.

I would be very happy if you would have these charges carefully investigated with particular reference to the different items I have marked from 1 to 14 and let me know.

1. If Thomas Eaglin reported to the adjutant the intolerable proximity of the man suffering from consumption.

2. If, after this report, this consumptive was moved in the bed next to Eaglin.

3. If this consumptive within two hours after Eaglin left the home was removed from barracks 3 to the tuberculosis hospital.

4. If there was another man in barracks 3 disturbing others in the night with coughing and the sufferings of asthma, etc.

5. If the bed assigned to Eaglin was foul with oil or grease, or had been slept in by one with skin disease before his occupancy.

6. If complaints have been made about this man using the bathtub with other members and no notice taken.

7. If the blankets furnished to Eaglin were "filthy dirty."

8. If there was no special cleaning or fumigation of bed clothing used by the tubercular patients in bed 42 of Company 3.

9. If these barracks are habitually overheated, kept with windows closed at night with diseased and unsober condition of members.

10. If there are any large number, such as 60 per cent, of the hospital patients who should be in barracks and men with contagious and other troublesome diseases in the barracks who might receive beneficial treatment in the hospital.

11. If a man was recently killed in Company 10 during a drunken brawl.

12. If during last summer a man was killed in the mess hall at Danville.

13. If the former captain of Company 3 was in jail in Dayton for a violation of the prohibition act.

14. If drunken orgies are indulged in in company barracks during the nighttime with toilet rooms for "straining canned heat and drinking bay rum."

I would be very pleased if you would have these matters gone into with impartial care with the idea of discovering the true conditions and seeing what may be done for their improvement.

Very truly yours,

ROY G. FITZGERALD.

NATIONAL HOME FOR DISABLED VOLUNTEER SOLDIERS,
HEADQUARTERS NATIONAL MILITARY HOME,
Dayton, Ohio, April 3, 1930.

Hon. ROY G. FITZGERALD,
House of Representatives, Washington, D. C.

Subject: Complaint of Thomas Eaglin relative to conditions Central Branch, Dayton, Ohio.

MY DEAR ROY: Your letter of recent date inclosing letter from Thomas Eaglin received. As I stated the other day, I turned it over to Col. B. K. Cash for his personal investigation.

The man complained of by Eaglin as suffering from tuberculosis is named Sherrer. He has been in and out of the various branch homes since 1911, and the diagnosis made up to the present time has been general disabilities not connected with his lungs. On his last readmission to the Central Branch, diagnosis of chronic bronchitis was made, in addition to other disabilities. As soon as the complaint in regard to his coughing disturbing members reached the adjutant's office, the adjutant referred him to the surgeon for examination. He was placed in the tuberculosis hospital for observation and after two weeks' observation a tentative diagnosis of chronic pulmonary tuberculosis, miliary, has been made. Considerable doubt still remains in the minds of the doctors due to the fact that 10 negative sputa were obtained, and there is also a question as to his former occupation which was that of a coal miner, entering into this case to a considerable extent, but the important fact involved is that as soon as the matter was brought to the attention of the adjutant the transfer and observation was made. I might add that the case is so unique that it is being placed before the Montgomery County Clinical Association, meeting to be held next Friday night.

In regard to changing beds, the condition in the home, as you know, for the past few months has been such that we have been crowded to the limit in caring for our members, and frequent changes of beds have been made to meet this demand.

In regard to there being an asthmatic in Company 2 disturbing members, we can not find there was such a man.

In regard to the bed furnished Eaglin, there was a stain on the underside of the mattress, but the bed linen, etc., furnished was fresh and clean from the laundry when the bed was assigned to him. I might add that the man referred to by Eaglin as suffering from skin disease has been ordered into the hospital for treatment.

As far as the condition of blankets is concerned, our general orders are that the blankets are to be kept clean, and if any of them are not clean they are sent to the laundry for washing.

The company commander does not remember any complaints being made to him nor were any complaints made to the inspector about the use of the bathtubs. There are shower baths on each floor of this building in addition to the tubs which can be used by the members.

It has been the custom at all branches where a case of this kind develops to have the mattress, blankets, etc., thoroughly fumigated. In this instance the company commander was a new man and overlooked it, but he has been admonished as to his duties in the future.

The question of ventilation of barracks has been a question which I have been in personal contact with for 16 years, and to suit the individual wishes of the members is practically an impossibility. In the most recent barracks built at the Pacific Branch an attempt is being made to obviate this trouble by the use of a small ward room where men of the same tastes can be quartered together, but in a building like No. 3 referred to, in which one ward covers an entire floor, it is impossible.

The hospitals at other branches have been so full this last two or three winters with men acutely sick that at times we have been obliged to turn away men in need of treatment because we had no beds to spare and it is possible that many men in barracks would be better off in the hospital if we had beds for them.

Several months ago some men were in the upper story of 10 who had been drinking, and the company commander came up to this floor to look into the matter, and one of the members, apparently without provocation, jumped off his bunk and struck another member with his fist on the head, causing his death. The case was turned over to the coroner, and is now being handled by the civil authorities of Montgomery County.

Last summer, apparently without any provocation whatsoever, a Spanish War veteran shot and seriously wounded a comrade in the mess hall at Danville during the dinner hour. There had been no ill will between the men and apparently no altercation before the shooting took place. It was done right across the table. This case was also turned over to the civil authorities of Vermilion County, Ill.

The man who was captain of Company 3 before Eaglin became a member of that company was arrested by the civil authorities off the home grounds and the case was handled by the civil authorities.

As far as drinking or drunken revelries in barracks are concerned, all officers of the home are under the strictest orders and do make an honest effort to put a stop to this. The situation which we are facing is a difficult one, but I can assure you that the home authorities are making every effort in the world to carry out the general policy of the Government in regard to possession or use of liquor.

I want to thank you for calling my attention to this case, because there are in it several lapses which we are taking steps to prevent in the future and unless we are given the benefit of criticism we can not improve our service.

I am inclosing herewith copy of office letter of April 2, 1930, to all governors relative to members suffering with skin disease or pulmonary tuberculosis, active.

Very sincerely,

GEORGE H. WOOD.

[Copy inclosed with letter from Gen. George H. Wood of April 3, 1930]

APRIL 2, 1930.

The GOVERNOR, ALL BRANCHES:

Members suffering with skin disease, or pulmonary tuberculosis, active.

1. It has come to the attention of these headquarters that in certain instances members of the home afflicted with skin disease, when the cases are noncontagious, have been allowed to remain in barrack. While these cases are noncontagious, they are obnoxious from the standpoint of the other members of the barrack. To date from the receipt of this letter all cases of skin disease, whether acute or chronic, coming under the above caption, will be transferred to hospital where they can be properly cared for and treated; and the allowing of this type of case to remain in barrack will be strictly prohibited.

2. Great care must be exercised in order that members suffering with pulmonary tuberculosis, active, are not allowed to remain in barrack. Occasionally a case of active tuberculosis has been discovered after the member has been on a domiciliary status for a considerable period of time. The above is a situation which must be carefully watched by the medical staff, especially upon original examination and at sick call; and any members showing a suspicious symptomatology along the lines indicated will be immediately given a thorough examination and period of observation if necessary, in order to establish an accurate diagnosis.

3. When any of the above cases are removed to the hospital from barrack, the bed will be thoroughly cleaned, mattress sterilized, blankets washed, and clean linen throughout provided before a new member is assigned to the bed.

4. The above matters will be brought by the surgeon to the personal attention of all members of the medical staff, and new staff members will be properly instructed.

5. Receipt of this letter will be acknowledged.

CHIEF SURGEON.

APRIL 12, 1930.

Hon. ROY G. FITZGERALD,
Washington, D. C.

DEAR MR. FITZGERALD: I received a copy of the letter you wrote General Wood, April 7, in receipt of the acknowledgment of the investigation caused by the complaint I made in regards to the tubercular patient that was put in the bed next to me in barracks 3. I also note in your letter that you took notice to the evasive answer they made in regards to the contempt the adjutant or captain showed in placing this sick man in a bed next to me after the adjutant was notified of the sick man's condition.

I want to thank you very much for all the sincere interest you have taken in this case, and am sensitive of the fact that it will be due to your prompt service, moral courage, and devotion to a cause that is just that many of the unfortunate members of the home will hereafter receive better treatment, although I may be used for a "goat" and martyr for the benefit of others; I am also conscious of that!

It will not be necessary for you to answer this letter, as I am willing to let the case drop where it is for this time and do not wish to take any more of your time, as I realize the many other important affairs that consume your time. Yet for your information I would like to comment on a few phrases of General Wood's letter to you on the case. The general says he turned it over to Col. B. K. Cash; in such cases the adjutant, Ben Adkinson, and the chief surgeon, Major Roberts, would be called on to furnish a report. These fellows have acquired their positions and intrenched themselves in the confidence of the Board of Managers for their skill in making alibis for such complaints. The letter states:

"As soon as the complaint in regards to this man's coughing reached the adjutant's office, the adjutant referred him to the surgeon for examination."

It was five days after I made this complaint to the adjutant, Ben Adkinson, that this sick man was moved over in the bed next to me. I will make an affidavit to that effect. There was no attention given to this complaint that I made to the adjutant during these five days until after I left the home. Then, as soon as I was gone, the captain handed him a note to report at the hospital, and in less than two hours after I left the home he was placed in the tuberculosis hospital. Members of the home have since told me his case at the time was pronounced permanent and he would not be allowed to leave the tuberculosis hospital. If this could have been done in two hours after I left, how is it that five days elapsed after I complained to the adjutant and nothing was done?

"He was placed in the tuberculosis hospital for observation * * *. Considerable doubt still remains in the minds of the doctors, due to the fact that he was a former coal miner."

What does coal mining, any more than cigar making have to do to a man's disease? A man with good sense did not have to be a doctor to tell that this man was in the last stages of consumption, his skeleton-like looks and consumptive cough told the story. When he came in with a small grip in his hand he was all in, he was breathing heavy and had to sit down and rest before he could go any longer. He came direct to this bed across from me; there were other empty beds in the barracks. That was two weeks before I left the home.

A man that was next to me went out on the 12th of March, and he (this sick man) was then moved over next to me. This was five days after I had made the complaint to the adjutant, and presumingly in defiance of the complaint I had made. The letter stated that he had been in and out of the home since 1911. This showed that he was an old-timer and knew by giving the captain a tip he could get by with it. When they go before the doctors for readmission, in most cases the doctor just asks their disability and writes it down as given. This accounts for him getting by the doctors, and some of these are young and inexperienced.

"In regard to the bed furnished Eaglin: There was a stain on the underside of the mattress, but the bed linen, etc., furnished was fresh and clean from the laundry when the bed was assigned to him."

The bed was not assigned to me. I asked to move over there to get away from the drunks in the end where I had been and to get some fresh air. After the man with the skin disease left this bed, another member named De Haven was put in the bed; later on he was taken to the hospital dangerously ill from drinking bay rum. I moved into the bed the same day De Haven was taken to the hospital; he had been on a drunk for several days; no clean linen nor blankets, either, were given me; these are only issued on certain days in the week, except when a new man comes in. I took the linen and pillows of the other bed which I had been using and these that were on the bed I put back on the bed which I had previously occupied. I was afraid to exchange the blankets, for if I had been caught doing it I would have been reprimanded by the sergeant or captain, unless I had slipped them a piece of money. I am opposed to tipping these drunken captains and sergeants when they are being paid to do this work. The dirtiest, filthiest looking blanket I secretly exchanged for another on an empty bed. Sherrer, the sick man, afterwards took this bed.

There is no top and bottom to these ticks, they are required to be turned over from time to time and this tick was grease and oil at both sides and all over, and I venture to say it is not on that bed now. Their alibis are a part of the perfected system under which these homes at the present time are dominated. This captain of Company 3 has placed himself in a position for promotion.

"The letter admits that the blankets and bed used by the consumptive patient were not fumigated. The alibi was that the captain was a new man."

There are enough things admitted, with what the records will show, to substantiate all that I have said. This captain, H. L. Arney, had previously been a sergeant in Company 8, and it is the sergeant's duty to see that beds are fumigated and kept clean, and it was due to his experience as acting captain that he was considered by the officials as competent for a company commander. He knew enough to take the money. The last time I saw him he was taking a dollar from a new man coming in. That secured this new man home protection. A man that never had a job outside is a good qualification for a captain in a soldiers' home under the present management.

In regards to the killing scrapes the answers are about as palatable as those I have commented on. General Wood would have you believe they were only sociable, friendly, killings. The letter said: "There were no ill feelings between the men and apparently no altercation before the shooting. A Spanish-American veteran seriously wounded a comrade." I was in Chicago at the time and later in Danville at the time the case came up for trial. The Danville newspapers then said there had been a heated quarrel over a seat at the table in the mess hall. The man then held in jail charged with murder went back to the barracks and got a gun (which he had for protection in the home) and went back to the mess hall and killed the other man. The case was postponed on account of smallpox at the home. I talked to some of the members that were loafing about the streets of Danville at the time and they said there was no smallpox out there.

"And the case was turned over to Col. B. K. Cash to investigate."

I presume this was the same Inspector Cash whose brother-in-law, Owen Green, a former State senator of Indiana, died in the bed next to me with the "flu" and pneumonia at Danville in February, 1926. Mr. Cash, who I think came there with him, remained at the home waiting developments, and was called to his bedside when he died. This patient was a Civil War veteran; he got better and was up once; and I believe if he had been properly taken care of he would have got over that case of influenza. On the next side to me at this time was a bed patient, Kilgore by name, that should have been kept in a room to himself. He was a Civil War veteran, was paralyzed, and affected with a skin disease and treated for this daily by the ward man; when his bed was made up the covers were always laid over on my bed. The next man put in the bed on the other side where Mr. Green died was another "flu" case; his name was William Craig, a Civil War veteran, born and raised on the ground where the Danville Home now stands. I knew this Craig for several years, met him there when he came back from California, and we were good friends. He owned property in Los Angeles and was one of the leaders that caused the senatorial investigation at the Pacific Branch in 1916. He is a sober, intelligent, and well-preserved man, not afraid to talk, and you can rely on him for information.

"This case is so unique that it is being placed before the Montgomery County Clinical Association."

That is a joke. The only thing that I can see unique about this tuberculosis patient was that officials running this home put him in a barracks among other men, either to spread the disease or to drive others out. The man can not live long and they can examine him all they want to. However, in the event that this case should ever come up again, Major Roberts is tricky enough, with the aid of some of his friends at this banquet given by his hospitality at the Government's expense last night, to prepare a plausible alibi. He has had 18 years' experience in making alibis.

"The most important fact involved is that, as soon as the matter was brought to the attention of the adjutant, the transfer and observation was made."

After two weeks of complaining to the captain, by other members, and five days after I had gone to the adjutant, he was sent to the tuberculosis hospital. But the most important thing was that this was not done until after he was moved over in the bed next to me and I had left the home. It appears that the object had been accomplished. Still more important in this case is that General Wood in his letter is silent on the most vital points at issue, the discrimination against me by putting the sick man in a bed next to me after I had complained to the adjutant. The argument is all in defense of the

incompetency of management and violation of the rules of the home on their part. Nothing is said of me going to the adjutant nor leaving the home because there was no action taken in the case while I was there. They all seem to be perfectly satisfied that I was forced out of the home and that that is entirely proper. That part of the home management speaks for itself.

Now, it would not be safe, or very pleasant at least, for me to go out there again after this complaint I have made and the investigation(?) that was made. They tell the public that they invite complaints but they offer no protection for the sober deserving member that is forced out and afraid of his life to make a complaint when tortured by the pigeon stools they keep on the pay roll. This is a part of the perfected system to keep unfortunate members' mouths closed even after they are drove out.

I would also be afraid to be vaccinated again in one of these homes, for there is no telling what might be on the point of these needles. This is where they will get me next time should I ever apply for admission again, for I will certainly refuse to be vaccinated, and there is pretty sure to be some vaccinating going on after this big reception given out at the home last night by Major Roberts. I was vaccinated twice in two weeks last February, all together about fifteen times in the homes—I think this is enough. I have a large scar on my arm from where I was vaccinated when a boy. This will be an excuse for them to bar me from the homes in the future, but it will not be without a long and hard fight if I am able to stand on my feet. Thanking you for all of your favors, I am,

Very respectfully, THOMAS EAGLIN.

I add a letter from a loyal welfare worker, which adds another picture of how our veterans are preyed upon.

DAYTON, OHIO, *March 5, 1930.*

Hon. ROY G. FITZGERALD,
Washington, D. C.

DEAR MR. FITZGERALD: You may not remember me, but of course I have met you a number of times in Dayton.

For 12 years I have been doing some welfare work in the Montgomery County Jail and have had a great deal of experience with prisoners.

I am wondering whether you are aware of conditions existing at the border line of the National Military Home. At pension time the inmates of the home, especially the young men, are constantly watched by the constables, and they are arrested and brought into the jail when they are guilty of nothing more than congregating together. If one or two have been drinking, the entire crowd is taken in. Many of them are not in a condition to be away from the home at all, as there are many crippled and others are very ill and under special treatment at the home. Sometimes as many as 12 are brought in at one time.

Is there not something that can be done in this situation? Can not these constables be prevented from making wholesale arrests? They are charged with drinking when it is very apparent that some of them have not been doing so. The squire fines them and the fine and costs amount anywhere from $25 to $40. If this is not paid they must stay in jail at the rate of $1.50 per day.

I decided to call this matter to your attention and to ask you if there is anything you can do to relieve the situation.

Thanking you, I am sincerely yours,

SARA I. WHITESIDE.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Michigan [Mr. CRAMTON].

The question was taken, and the amendment was rejected.

The Clerk read as follows:

SEC. 5. (a) When the consolidation and coordination herein provided for shall have been effected in the administration of veterans' affairs the President shall so declare by proclamation or order, whereupon the corporation known as the National Home for Disabled Volunteer Soldiers and the Board of Managers shall cease to exist.

(b) All contracts and other valid and subsisting obligations of the corporation, the National Home for Disabled Volunteer Soldiers, shall continue and be and become obligations of the United States, and the United States shall be considered as substituted for said corporation with respect to all such demands either by or against said corporation, unless and until they shall thereafter be superseded or discharged according to law. The outstanding obligations assumed by the United States by virtue of the provisions of this subdivision may be enforced in the Court of Claims or in the district courts of the United States according to the ordinary provisions of law governing actions against the United States, and such courts shall have the power to enter judgment against the United States, with interest, in the same manner and to the same extent that said corporation may now be sued. No such suit shall be maintained upon any cause of action existing at the time of the dissolution of said corporation or arising simultaneously therewith, unless brought within two years from the time of such dissolution.

With the following committee amendments:

Page 5, line 16, after the word "enforced," insert the words "by suit."

Page 5, line 21, strike out the word "that" and insert the words "as if."

Page 5, line 22, strike out the words "may now be sued" and insert "were party defendant."

The committee amendments were severally read and severally agreed to.

The Clerk read as follows:

SEC. 6. (a) All unexpended appropriations in respect of any hospital, bureau, agency, office, or home consolidated into the administration of veterans' affairs shall, upon such consolidation, become available for expenditure by the administration of veterans' affairs and shall be treated as if the administration of veterans' affairs had been originally named in the laws making the appropriations.

(b) All orders, rules, regulations, and permits or other privileges, issued or granted in respect of any function consolidated under the provisions of this act and in effect at the time of the consolidation, shall continue in effect to the same extent as if such consolidation had not occurred, until modified, superseded, or repealed by the administrator of veterans' affairs.

(c) The administrator of veterans' affairs shall make annually, at the close of each fiscal year, a report in writing to the Congress, giving an account of all moneys received and disbursed by him and his administration, describing the work done, and stating his activities under subdivision (b) of section 1 of this act, and making such recommendations as he shall deem necessary for the active performance of the duties and purposes of his administration.

Mr. KENDALL of Kentucky. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The gentleman from Kentucky offers an amendment, which the Clerk will report.

The Clerk read as follows:

Amendment offered by Mr. KENDALL of Kentucky: Page 6, line 24, after the word "administration," strike out the period and insert "and shall submit to the Congress at its next session, beginning December, 1930, a study or report as to the feasability of transferring to the central office at Washington, D. C., all administrative functions, such as the collection of insurance premiums, making payments of compensation, and all clerical functions pertaining thereto now being performed by the several regional offices, together with a statement showing what, if any, saving in administrative costs would be accomplished thereby, together with what, if any, disadvantages would be suffered by the veterans: *Provided*, That pending such report by the administrator and the consolidation and coordination herein provided for, no further decentralization of functions now performed in the central office of the United States Veterans' Bureau at Washington, D. C., shall be made to the regional offices."

Mr. KENDALL of Kentucky. Mr. Chairman and ladies and gentlemen of the committee, I have given considerable thought and study to the question of cost in administration of the laws enacted for the veterans of all wars, and I believe that the bill now before us will go a long way in bringing about a more economical administration as well as increasing the material benefits of the disabled veterans, and I am thoroughly in accord with any program which tends to lessen the burden of taxation, provided that the program does not result in a detriment to the disabled veteran, and to the dependents of those who made the supreme sacrifice on the altar of the war god. I shall endeavor to explain, and briefly so, why I believe my amendment will not only depreciate the cost of administration, but will be advantageous to the veteran.

The bill now before us provides for an annual saving of approximately two and one-half million dollars, while the amendment which I offer for your consideration will show an annual saving of some five million dollars on two items of administration in the Veterans' Bureau which are chargeable to the expenditures allocated to the regional offices. The two items mentioned in my amendment are the collection of insurance premiums which should be collected by the central office direct, and thereby eliminate the duplication of records and accounting. The second item relates to the veterans who are drawing compensation on a permanent basis; that is, their disabilities have reached a fixed status, and according to the testimony of General Hines, accompanying H. R. 10630 on the consolidation of veterans' activities, 70 per cent or more of the World War veterans who are drawing compensation are on a permanent basis, which means that all there is to do in these cases is to mail the veterans their monthly checks. This check requires a check in the regional office, a check in the central office, and a further check by the Comptroller General's office. This procedure applies to the collection of insurance premiums as well. So, speaking in the parlance of the well-known radio comedians, we have a check and double check at an enormous overhead cost, which could and should be eliminated, thereby effecting an annual saving of some five million dollars.

We all concur, I am sure, in the fact that the decentralization of administrative functions of any business or organization is indeed expensive and not at all satisfactory. Relating to the Veterans' Bureau, I would class as administrative the functions of rating, adjudication, payment of compensation, and the collection of insurance premiums and the auditing thereof. Such functions as examining, treatment, and social care of our veterans are not administrative in character and should be performed in as close proximity to the veteran as possible. However, my amendment only deals with two items and the auditing thereof of the functions which I class administrative. Regardless of the fact that whether Congress passes this bill providing for the consolidation of veteran activities, why should not the Veterans' Bureau transfer cases which have reached a permanent status to the central office and mail checks therefrom?

Mr. GARBER of Oklahoma. Mr. Chairman, will the gentleman yield?

Mr. KENDALL of Kentucky. Yes.

Mr. GARBER of Oklahoma. Since many of us did not hear your amendment when it was read, will you kindly restate its purport?

Mr. KENDALL of Kentucky. I will be glad to say that it provides for a study by the administrator of functions now being performed in the regional offices, such as the collection of insurance funds and the payment of compensation. I shall try to bring it out more clearly.

The passage of the Johnson or I believe what is now named the Rankin bill will increase the activities of the various regional offices; and in order to expedite the thousands of claims which will necessarily follow, why not transfer to the central office all activities such as my amendment suggests? For my amendment, which I submit for your consideration, does not in the least involve the taking away of any benefits now inuring to the disabled veterans and does not affect the bill in any way. It only provides that we shall not incur any further administrative expense during this year for decentralization, and by having the administrator report to Congress, we will have the benefit of his valuable knowledge and experience of administration, which can be given consideration by Congress in its general study of veterans' legislation; and then if my conclusions be true, I would like to see this annual saving of some five million dollars diverted in a channel which would benefit the veteran. This saving could be used in improving our hospitals along the lines suggested by General Hines before the Appropriations Committee, that is by equipping each of our hospitals in such a manner that no matter what disease or injury a veteran might be suffering from, he can receive proper treatment therein. As it is to-day, our disabled men must travel hundreds of miles to receive treatment for a particular disability, although we have one or more hospitals in nearly every State.

I trust, ladies and gentlemen, that you will adopt my amendment, and thus we can ascertain the advisability of my suggestion.

Mr. OLIVER of Alabama. Mr. Chairman, will the gentleman yield?

Mr. KENDALL of Kentucky. Yes.

Mr. OLIVER of Alabama. Is there any substantive law that forbids the transfer of these activities now to the central office?

Mr. KENDALL of Kentucky. None to my knowledge.

Mr. OLIVER of Alabama. Why, then, is it necessary to offer an amendment for that to be done? The purpose of the bill is to reduce expenses, and it is fair to assume that all transfers in the interest of economy will be carried out. It occurs to me that an amendment like that would tend to destroy the faith which the supporters of the bill have in it.

The CHAIRMAN. The time of the gentleman from Kentucky has expired.

Mr. GARBER of Oklahoma. Mr. Chairman, I move to strike out the last word.

The CHAIRMAN. The gentleman from Oklahoma is recognized for five minutes.

Mr. GARBER of Oklahoma. Mr. Chairman and members of the committee, I have been very much interested in the main question proposed by the pending bill, and I believe that much of the controversy has been occasioned by the confusion of terms. Those who have read the hearings will readily see that the distinction was never regarded—that "consolidation" and "coordination" are words used promiscuously and interchangeably and synonymously when they have distinct definite legal meanings. Now, consolidation means to merge. It means the abolishing of different entities and the merging of them into one new and independent bureau or agency. That is what consolidation means. On the other hand, coordination means bringing them together, and, as recommended by the special committee and the President in his message, bringing them together under an assistant secretary of some department, under a member of the Cabinet.

Now, let us return to an investigation of what the experts say on the subject. I have due regard for every member of the committee here. The committee is composed of able men, who are prompted by an earnest and unquestioned desire to serve the veterans in the way of improvement of the service and to serve the country. But what do our expert witnesses say in regard to this question?

On the 23d day of May, 1929, the President appointed a committee consisting of the Secretary of the Interior as chairman; Gen. Frank T. Hines, Director of the United States Veterans' Bureau; Gen. George H. Wood, president of the Board of Managers of the National Home for Disabled Volunteer Soldiers; Hon. Walter H. Newton, then Member of Congress, now Secretary to the President; and Col. C. B. Hodges, military aide to the President, as executive secretary, which committee was to "consider the better coordination of Government activities dealing with veterans' matters." Under date of October 1, 1929, this committee made a unanimous preliminary report to the President containing the following recommendations:

(a) That the President should be given by Congress the power to bring under a common head all forces of the Government for veterans' relief so as to obtain better coordination and so that a uniform program can be developed for the future. (If the President should so desire, the committee will submit the draft of a bill to bring this about.) No effort to bring existing legislation into a uniform program is recommended.

(b) That the President take immediate steps for coordination, as follows:

(1) Create a central coordination committee composed of representatives from the Pension Bureau, National Home for Disabled Volunteer Soldiers, and the Veterans' Bureau, to meet at periodic times in Washington.

Its functions should be to continue on a permanent basis the conferences initiated by this committee as a clearing house for data promoting avoidance of overlaps, joint utilization of medical and hospital facilities, interchange of up-to-date statistics on facilities available, avoidance of unnecessary transportation, etc.

(2) Create district coordination committees, similar to the central committee, but functioning at strategic field points.

Their local duties should be similar to those of the central committee.

They should be charged with the responsibility for furnishing current data to the central committee upon facilities available and possibilities of coordination. Effective teamwork must be secured by practical and informal cooperation in the field before it can be effected by formal direction from Washington.

(c) That this committee be continued in existence to make a further study of the results achieved by the above-mentioned coordination committee within the trial period, say, of one year; and, if so desired by the President, to make further recommendation concerning the manner of bringing existing agencies for veterans' relief under a common head.

We all agree with the general statements made by the gentleman from New Jersey. But what did this special committee say? This is what they said:

That the President should be given by Congress the power to bring under a common head all forces of the Government for veterans' relief so as to obtain better—

Better what? Better coordination—not so as to obtain consolidation but—

better coordination, and so that a uniform program can be developed for the future.

That is what the special committee reported.

Then, on December 3, 1929, President Hoover embodied the recommendations of his special committee in his message to Congress, in which he said:

I am convinced that we will gain in efficiency, economy, and more uniform administration and better definition of national policies if the Pension Bureau, the National Home for Volunteer Soldiers, and the Veterans' Bureau are brought together under a single agency.

* * * The conservation of national resources is spread among eight agencies in five departments. They suffer from conflict and overlap. There is no proper development and adherence to broad national policies and no central point where the searchlight of public opinion may concentrate itself. These functions should be grouped under the direction of some such official as an assistant secretary of conservation. The particular department or Cabinet officer under which such a group should be placed is of secondary importance to the need of concentration. The same may be said of educational services, of merchant marine aids, of public works, of public health, of veterans' services, and many others, the component parts of which are widely scattered in the various departments and independent agencies.

Does the pending bill embody the recommendations of the special committee appointed by President Hoover to investigate the subject? Does it embody the recommendations of the President in his message to Congress? Those questions must be answered in the negative.

The bill provides for consolidation instead of coordination. It transfers all the powers of the several agencies to one bureau designated as the "administration of veterans' affairs" whereas the report and message of the President recommended that they be grouped under an assistant secretary in a department under a Cabinet officer.

The CHAIRMAN. The time of the gentleman has expired.

Mr. GARBER of Oklahoma. Mr. Chairman, I ask unanimous consent to proceed for five additional minutes.

The CHAIRMAN. Without objection the gentleman from Oklahoma [Mr. GARBER] is recognized for five additional minutes.

There was no objection.

Mr. GARBER of Oklahoma. The President said:

> I am convinced that we will gain in efficiency, economy, more uniform organization and better definition of national policies if the Pension Bureau, the National Home for Volunteer Soldiers and the Veterans' Bureau are brought together under a single agency.

Nowhere does the President recommend a consolidation of those agencies. As a member of the Cabinet under two presidents, as Secretary of Commerce, Mr. Hoover heard the weekly discussions of the members regarding the work of their various bureaus and departments. As its Secretary he brought the Department of Commerce from obscurity into national and international fame for its efficiency. I believe the President is the best qualified person in the public service to speak upon this question and to advise the course to pursue. [Applause.]

The coordinating of the related agencies of the Government, the bringing of them together, cutting out the overlap and duplication, the elimination of waste and red tape is one of the big objectives of the administration. It is one of the big responsibilities voluntarily assumed by the Chief Executive. His suggestions are the result of long experience, study, and recognized ability. They are such as in my judgment should be approved and adopted by Congress.

Mr. WILLIAMSON. Will the gentleman yield?

Mr. GARBER of Oklahoma. I yield.

Mr. WILLIAMSON. Has the gentleman any reason to believe that the President is not in favor of this bill as written?

Mr. GARBER of Oklahoma. I am not indulging in speculations or beliefs of that kind at all.

Mr. WILLIAMSON. I may say that the President has been fully consulted on this bill.

Mr. GARBER of Oklahoma. I am just presenting the evidence to the members of this committee.

Mr. KNUTSON. Will the gentleman yield?

Mr. GARBER of Oklahoma. I yield.

Mr. KNUTSON. Is it fair to assume that the Secretary of the Interior would come before the gentleman's committee and take a position opposed to that held by the President?

Mr. WILLIAMSON. It is peculiar, but that is what he did.

Mr. KNUTSON. Well, we will take that with a grain of salt.

Mr. GARBER of Oklahoma. Another witness testified before the committee, and that witness might inform the gentleman as to what the President believes. I do not undertake any such responsibility, but I believe the gentleman will agree with me that Secretary Wilbur, with his close association and relationship to the President, is entitled to consideration in expressing his belief. Secretary Wilbur stated as follows, referring to the President's belief:

> In his message he stated he thought these organizations should be brought together under a common agency, and I infer, combining that with another statement in his message, that it would be under an assistant secretary, since it was all in the same field. I think you can read that into that message.

That is what the Secretary of the Interior, a close personal friend of the President, and whom he appointed chairman of the subcommittee to investigate this matter, says, in his judgment, is what the President believes.

Now, this is the responsibility of the two political parties. It is a peculiar responsibility resting upon the present administration. I stand for the enactment of a measure that will carry out the policy of the President in this respect. [Applause.]

Mr. KNUTSON. Will the gentleman yield?

Mr. GARBER of Oklahoma. I yield.

Mr. KNUTSON. Does the gentleman know of anyone who is closer to the President than the Secretary of the Interior?

Mr. GARBER of Oklahoma. I do not.

The Pension Bureau is one of the most efficient agencies we have in the public service. It was brought to this high state of efficiency under the direction of a Commissioner of Pensions in the Department of the Interior under a Cabinet officer. Col. Winfield Scott, a veteran of two wars and Commissioner of Pensions under the Coolidge administration, contributed much to its present high state of efficiency. His splendid service in that position, his sympathetic personal attention and liberal construction of the law is remembered with appreciation by every member of this committee. The present commissioner is maintaining that high state of efficiency attained under the Scott administration.

According to the last report, there were on the rolls of the Pension Bureau 477,000 pensioners and on the rolls of the Veterans' Bureau 349,806 beneficiaries. The proposed transfer of the power of the Pension Bureau to the new bureau to be created was never contemplated by the President in his message to Congress but simply the grouping of the three agencies under an assistant secretary in a department under a Cabinet officer. Under such a scheme an appeal would lie to the Secretary. The proposal to merge and consolidate under an independent bureau would result in the same status that we now have between the Veterans' Bureau and the President, and if it would result in the same service it would be anything but satisfactory to the beneficiaries of that relief which it is the liberal policy of this Government to extend.

Consolidation should come only after further experience and development. Consolidation should be brought about by slow growth and as rapidly as experience and development shows it can be done with safety to the service of the veterans. [Applause.]

The CHAIRMAN. The time of the gentleman has again expired.

Mr. WILLIAMSON. Mr. Chairman, I just want to take one minute with reference to the pending amendment. The bill provides that the administrator shall make a report to Congress at the opening of each regular session of the Congress. This amendment, as I understand it, directs him to make a study of the question of whether or not the regional offices should be discontinued, and also directs that during such study veterans' activities shall not be any further decentralized.

I think this report had better be left to the new administrator. Let him report upon the matters which he thinks should be reported upon. I do not think we should undertake in this bill to direct the administrator's attention to any particular part of the new set-up as to which he shall make a special study and report back to Congress. To a certain extent the proposed amendment would be a duplication of the work which is contemplated by the resolution which passed the House last week providing for a joint committee of Congress to make a complete study of veterans' legislation. That committee should make a study of that problem and report back to Congress, and we should not burden the new director with this additional work.

He will have enough to do to reorganize the activities and get them going without our putting this additional burden upon him. I therefore hope that the amendment will be voted down.

Mr. OLIVER of Alabama. Will the gentleman yield?

Mr. WILLIAMSON. I yield.

Mr. OLIVER of Alabama. I wish to ask the chairman of the committee some questions. I assume that the gentleman's study of this bill justified the positive statement which he is alleged to have made on yesterday on possible economies in administration. I refer to a speech which the gentleman made to some ladies' organization in Louisville; and I note at that time the gentleman stated in a very positive way that by effecting consolidations and coordinations we could safely look to a saving of many millions of dollars, and the gentleman estimated we could thereby dispense with the services of one-fourth the employees now on the pay rolls of the Government. Being a member of the Appropriations Committee, I was deeply interested in that statement, and I would like to have something definitely written into the RECORD which will serve as guide posts for the Committee on Appropriations when it comes to providing appropriations for the agencies that are to enjoy the benefits resulting from such mergers and consolidations. May I ask how much of that saving it is estimated will be reflected by the passage of this bill?

Mr. WILLIAMSON. Of course, it is impossible in advance to determine exactly what the saving will be. It has been estimated by witnesses who appeared before our committee that the total saving in administration expenses will in the end amount to approximately $1,500,000 annually.

Mr. OLIVER of Alabama. Resulting from the passage of this bill alone?

Mr. WILLIAMSON. Resulting from this particular consolidation. It has also been estimated that there will be a saving made in the course of 8 or 10 years in the matter of construction, by making additions to institutions that we now have, in place of building new ones as we would have to do if they were to remain separate entities, amounting to eight or nine million dollars.

Mr. OLIVER of Alabama. Is the gentleman prepared to give a split up of that saving, so as to indicate the large items where savings will be reflected? For instance, I am specially interested to know how many employees we can safely count on dispensing with after the passage of this bill?

Mr. WILLIAMSON. I do not think we can safely depend upon the reduction of personnel at all in the beginning.

It is going to take some time to get the consolidated activities reorganized. Eventually, I think, it will result in eliminating the regional offices and consolidating all the activities here in Washington, which will make possible a very large reduction in personnel, running better than 25 per cent.

Mr. OLIVER of Alabama. I have asked for a copy of the gentleman's speech made on yesterday, because I want to see how definite he was as to the savings to be effected, and I am wondering whether in that speech the gentleman gave only a general statement of the promised savings that will result from consolidations and coordinations.

Mr. WILLIAMSON. I will say to the gentleman that I stated that in the event that we could organize the Government and run it as big business is being operated to-day we could cut down the personnel by 25 per cent. But I went on to state that as the Government is at present organized it could not be done.

Mr. OLIVER of Alabama. Did the gentleman illustrate the position he then took by referring to this bill as a step in that direction?

Mr. WILLIAMSON. I do not think I did.

Mr. OLIVER of Alabama. Did the gentleman have in mind this bill as being at least one of the steps by which we might accomplish that very desirable purpose?

Mr. WILLIAMSON. I had in mind this bill as one of the factors.

Mr. OLIVER of Alabama. Did the gentleman have in mind that this bill would accomplish the definite savings promised the ladies, and that we would be able to materially cut down the personnel—and, after all, it is the personnel that costs, I will say to the gentleman.

Mr. WILLIAMSON. If we get the right kind of an administrator, in my judgment we can cut the personnel within two years very close to 25 per cent.

Mr. PATMAN. Mr. Chairman, I move to strike out the last word. I have asked for this time for the purpose of inviting your attention to one particular clause in the bill now under consideration. It is a part of section 2, the last three lines of the section, on page 3, lines 11, 12, and 13.

All final decisions or orders of any division, bureau, or board in the administration of veterans' affairs shall be subject to review, on appeal, by such administrator.

As I understand the present law, we start with a veteran's case at the regional office; after a hearing there and a decision that is unfavorable, we appeal the case to the central office. In my part of the country we appeal the case to New Orleans. From there the case is appealed to the Director of the Veterans' Bureau in Washington. If this bill becomes a law it provides for an additional appeal. There will not only be an appeal to the Director of the Veterans' Bureau, but after the Director of the Veterans' Bureau passes on a case it can be appealed to the administrator. I do not object to any appeal if it is calculated to bring relief to the veterans, but I see no reason why we should have so many appeals. Justice should be administered without so many appeals and without so much delay.

As a member of the World War Veterans' Legislation Committee, I listened with a great deal of interest to the hearings on the bill which recently passed the House, and I noticed the testimony of one of the witnesses, that the cost of the appeals in these cases amounts to $200 per case. It costs that much money to appeal a case from the regional office to the director here in Washington. If it costs $200 to appeal one of these cases under the present law it will doubtless cost at least $50 more in order to appeal a case to this new administrator. In many instances these files are 2 and 3 feet high. A witness testifying for the director told us that when an appeal is made it is necessary for a new group to take that whole file and carefully go through it. They are paying the people who are doing that work from $3,000 to $8,000 a year. Consequently it costs a great deal of money, and if we add this additional appeal it will cost at least $50 and possibly $100 additional to appeal these cases.

Mr. KNUTSON. Will the gentleman yield?

Mr. PATMAN. Yes.

Mr. KNUTSON. The gentleman must remember that there are about 24,000 employees in the Veterans' Bureau and we have to provide something for them to do.

Mr. PATMAN. That is the reason I oppose this bill. If the present Johnson bill as amended in the House passes the Senate and becomes a law we can abolish a large number of the Veterans' Bureau positions. In fact, it will result in the discharge of thousands of employees in the Veterans' Bureau. There will be no necessity for keeping them on the pay roll. I predict that if the Johnson bill becomes a law it will save $12,500,000 in administrative expenses; it will save millions of dollars in hospitalization, because soldiers who now go to the hospitals will not go there if they are permitted to draw a reasonable amount of compensation. I think there will be a saving to the Government in administrative and hospital expenses of at least $25,000,000 if the Johnson bill is passed.

I know the gentlewoman from Massachusetts has worked faithfully for the veterans of the World War. She has said the Johnson bill has no chance of meeting with the approval of the President of the United States. With all due respect for her, I believe it has. That bill is nothing more than a bill to eliminate red tape from the administration of the World War veterans' act and to carry out the original intent of Congress. That is all that bill does. It is not as broad in its terms as a great many people would think. It will not cost the enormous sum of money to administer the law as is claimed by a large number of people. [Applause.]

The CHAIRMAN. The time of the gentleman from Texas has expired.

The pro forma amendment was withdrawn.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kentucky.

The amendment was rejected.

The Clerk read as follows:

SEC. 7. All laws relating to the Bureau of Pensions, the National Home for Disabled Volunteer Soldiers, and the United States Veterans' Bureau, and other governmental bureaus, agencies, offices, and activities herein authorized and directed to be consolidated, so far as the same are applicable, shall remain in full force and effect, except as herein modified, and shall be administered by the administrator of veterans' affairs, except that section 4835 of the Revised Statutes is hereby repealed.

Mr. SWING. Mr. Chairman, I move to strike out the last word.

Notice has been given by the gentleman from New York, who, being a veteran, has influence in this House in veterans' legislation and other matters, that he intends to demand a separate vote in the House on the amendment striking out subdivision (b) of section 1.

I think in fairness to the House I should say that after the first day of consideration of the bill for amendment, when subdivision (b) of section 1 was stricken out, the members of the Committee on Expenditures held a conference, went over the complete bill, and I think I can say that they unanimously agreed—certainly it was unanimous as to all those who were present, and most of the members of the committee were present—that the bill without subdivision (b)——

Mr. LAGUARDIA. Mr. Chairman, I make a point of order.

The CHAIRMAN. The gentleman will state his point of order.

Mr. LAGUARDIA. The gentleman is now taking up matters that occurred in an executive session of the committee. I think we can legislate for ourselves here without any gentleman's agreement or any other kind of deal made in committee.

The CHAIRMAN. The gentleman from California will proceed in order.

Mr. SWING. I can make my idea clear without revealing any secrets. I am safe in saying that it is the present opinion of the majority of the Committee on Expenditures in the Executive Departments, if not of all the members of the commitee, that the bill with subdivision (b) of section 1 out presents a good, workable bill and that under section 2 the administrator will have all necessary power to eliminate duplication and waste, and to bring about the highest form of efficiency and the greatest economy at one and the same time.

Mr. SCHAFER of Wisconsin. Will the gentleman yield?

Mr. SWING. I yield.

Mr. SCHAFER of Wisconsin. The meeting of the Committee on Expenditures in the Executive Departments where the action

was taken that the gentleman was endeavoring to relate to the House, was not an executive session of the committee.

Mr. LAGUARDIA. That makes no difference.

Mr. SWING. I will not refer again to anything that the committee did.

Mr. LAGUARDIA. The gentleman has already told us.

Mr. SWING. I think the opinion of practically every member of the committee as to the condition of the bill with subdivision (b) out is entitled to some weight by the House.

Mr. MOORE of Virginia. Mr. Chairman, I rise in opposition to the pro forma amendment.

Mr. Chairman, I hope if this bill should be passed by the House and enacted into law it will not disappoint the expectations of those who are sponsoring it. I hope it may result in the savings which they anticipate and in an increase of efficiency; but I would like to suggest very respectfully to the chairman of the Committee on Expenditures in the Executive Departments that there are many other directions in which the committee is empowered to look with respect to the matter of economy and efficiency.

When I came to the House there were 11 small committees charged with the duty of investigating expenditures in the various departments. After awhile I made the suggestion that, inasmuch as those committees did not function, they should be combined into a single committee charged with the duty of keeping in touch with all of the departments and agencies of the Government, with a view of preventing irregularities and effecting such savings as might be possible.

In 1927, at the beginning of the Seventieth Congress, under the leadership of our respected friend the late Martin Madden, the suggestion was carried into effect, and this committee was created, of which the able gentleman who faces me is the chairman.

Now, see how extensive is the power vested in the committee. It is to make "examination of the accounts and expenditures of the several departments, independent establishments and commissions of the Government and the manner of keeping the same; the economy, justness, and correctness of such expenditures; their conformity with appropriation laws; the proper application of public moneys; the security of the Government against unjust and extravagant demands; retrenchment; the enforcement of the payment of moneys due to the United States; the economy and accountability of public officers"; and so on.

So far as I know, and I am not saying this critically but regretfully, the committee which has been in existence since December, 1927, has brought before the House only two bills, the bill we are now dealing with and the bill that provided for the transfer of the prohibition functions to the Department of Justice. Meanwhile, however, it would seem the committee has had a golden opportunity of working effectively along other lines.

We are often reminded that all investigations of official irregularities are conducted by the Senate. I suppose there is no objection to referring to the Senate now since the idea of comity between the two bodies was eliminated yesterday [laughter], but while the Senate has been actually investigating we have been notified in the House time and time again of supposed misdoings in several departments.

Why, it was charged on the floor here two or three months ago that there is such a condition in the Post Office Department with respect to leasing post-office accommodations. The charge has been made that there are irregularities in the Shipping Board. Other similar charges have been made.

I would like now to suggest to the able chairman and to his able colleagues that they should keep in contact with the departments and other agencies, and particularly with the Comptroller General, so that the House of Representatives may take part in finding out what wrongs, if any, there are, and what remedies should be applied.

Mr. WILLIAMSON. Will the gentleman yield?

Mr. MOORE of Virginia. Yes.

Mr. WILLIAMSON. I may say to the gentleman that the committee has already undertaken some investigations, but we are not as good at publicity as they are over on the Senate side and we have not been getting much credit in that way for our work. Let me say further that within the last two years the committee has helped to put a stop to a number of irregularities that existed in the Government service.

Mr. MOORE of Virginia. I am very glad to hear the gentleman say that, and I wish to reiterate that I have no disposition whatever to be unfairly critical of his committee.

The CHAIRMAN. The time of the gentleman from Virginia has expired.

Mr. MOORE of Virginia. Mr. Chairman, I ask unanimous consent to proceed for two more minutes.

The CHAIRMAN. Without objection, the gentleman from Virginia is recognized for two additional minutes.

Mr. MOORE of Virginia. I am simply calling the attention of the House to the tremendous importance of this committee and to the great usefulness of which it is capable if it exerts the authority it possesses. If this is steadily done by the committee I think it will be greatly to the advantage of the Government.

Mr. SCHAFER of Wisconsin. Will the gentleman yield?

Mr. MOORE of Virginia. Yes.

Mr. SCHAFER of Wisconsin. As one member of the committee I have offered motions in the committee to carry on certain investigations, and in the future I shall again urge that expenditures in the prohibition department be investigated, particularly the Kitty Costello expenditures.

Mr. MOORE of Virginia. I will say to my friend from Wisconsin, that he can not offend me by exerting his efforts in every quarter where there is any possibility at all of any maladministration, where there is any reason to believe that the affairs of the Government are not being properly conducted. [Applause.]

Mr. LAGUARDIA. Mr. Chairman, I move to strike out the last two words. In reply to a statement made by the gentleman from California, I desire to call attention of the committee to paragraph (b) of section 1. Paragraph (b) provides:

(b) Under the direction of the President the administrator of veterans' affairs shall have the power, by order or regulation not inconsistent with law, to consolidate, eliminate, or redistribute the functions of the bureaus, agencies, offices, or activities in the administration of veterans' affairs and to create new ones therein, and, by rules and regulations, shall fix the functions thereof and the duties and powers of their respective executive heads.

That was stricken out on an amendment, and I am going to ask for a separate vote. If the amendment is carried then paragraph (b) remains out. If the noes prevail, then paragraph (b) remains in.

Now, gentlemen, I am doing that not to hamper the committee but to help the committee. I can readily understand that at times contingencies may arise within the committee as to make it necessary for the committee to submit to proposed amendments. But after all it is for the House to decide what should be in the bill and what should go out.

I submit to every sincere friend of the bill seeking to consolidate these veteran activities, that section (b) is absolutely necessary. If you intend to simply create more confusion, more difficulties, more red tape, then the thing to do is to tie the hands of the President in the consolidation of these activities.

But if you desire to cut the red tape, if you desire to give the veterans the service they are entitled to, then by all means permit paragraph (b) to remain in the bill by voting "no."

Mr. BEEDY. Will the gentleman yield?

Mr. LAGUARDIA. Certainly.

Mr. BEEDY. As one member of the committee, I was not present when any agreement was made in regard to paragraph (b); but I think it is indispensable to the purposes we set out to accomplish, and I shall vote to keep it in the bill.

Mr. LAGUARDIA. And the gentleman is a member of the committee.

Mr. COCHRAN of Missouri. Will the gentleman yield?

Mr. LAGUARDIA. I yield.

Mr. COCHRAN of Missouri. I do not desire to state what occurred in the committee, but I never have agreed to the elimination of paragraph (b).

Mr. LAGUARDIA. And the gentleman, also a member of the committee, intends to vote to retain it in the bill?

Mr. COCHRAN of Missouri. Absolutely.

Mr. LAGUARDIA. I thank the gentleman. Consolidation seems to be the object of the bill, that being so, the bill must give the President the latitude and power to enable him to effect a real consolidation and establish the machinery necessary to efficiently carry out and administer the laws affecting our veterans.

Mr. McLEOD. Mr. Chairman, I offer the following amendment.

The Clerk read as follows:

Amendment offered by Mr. McLEOD: Page 7, line 10, add a new section, as follows:

"SEC. 8. (a) That in order to consolidate certain outstanding obligations of the Government under the World War adjusted compensation act, provide for greater economy and justness in administration, and secure the Government against unjust and extravagant demands, and notwithstanding any provision of the World War adjusted compensation act, as amended, the administrator of veterans' affairs, upon application

by a veteran in whose name has been issued an adjusted-service certificate, said veteran showing himself to be in actual urgent need of financial assistance, is hereby authorized and directed to pay immediately to such veteran the full face value of his adjusted-service certificate; and the administrator of veterans' affairs is hereby authorized to make suitable regulations for the administration of this section in order to pay as promptly as possible the above-mentioned benefits, giving preference as far as practicable in proportion to the urgency of the need of the applicants.

"(b) There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, a sum not exceeding $50,000,000 to carry out the purposes of this section for the current fiscal year."

Mr. WILLIAMSON. Mr. Chairman, I make the point of order that the amendment is not germane to section 7 or to the bill itself.

The CHAIRMAN. The Chair will hear the gentleman from Michigan [Mr. McLEOD].

POINT OF ORDER ARGUMENT

Mr. McLEOD. Mr. Chairman, one of the provisions of my amendment provides for the payment of the face value of adjusted-service certificates to those veterans who show by their applications that they are in most needy circumstances. The question may arise, How is the bureau to determine the degree of need in the case of any particular veteran? This is a matter to which the Director of the Veterans' Bureau has evidently given considerable detailed thought, as shown by his statement which appears on page 3 of the annual report of the director, as follows:

The director has also publicly proposed that consideration be given to the adoption of a new policy of making actual need an important factor in the awarding of benefits. In the opinion of the director such consideration is particularly indicated at this time by reason of the constantly increasing expenditures for veterans' relief coupled with the urge for further liberalization of existing laws. If actual need were made an important factor in the award, it is thought by the director that it would more nearly meet with the universal approval of the public and the Congress.

It is particularly appropriate to inaugurate this new policy at this time when the distress among veterans is largely due to unemployment which is in no way the fault of the veterans themselves. Unemployment, in my opinion, ought to be and logically would be one of the factors in determining actual need. The fact that a veteran has an outstanding loan against his certificate would undoubtedly be another factor in determining actual need. And many other circumstances would be considered. The Veterans' Bureau seems to be prepared to administer benefits on this basis and, in fact, has asked Congress to consider putting all benefits on this basis.

One of the objections to any proposal for benefits to the veterans is the cost. Congress can not make appropriations even for the most worthy object, as this is, without considering the effect on the Treasury. But in this case it is merely a question of determining when we are going to pay what we are absolutely obligated and have agreed to pay eventually. We are merely choosing whether we are to pay the veterans now, while they are living but in need, or whether we continue to hold the money in the Treasury until 1945. My proposition is that we begin paying these obligations now to the most needy veterans as rapidly as we can without increasing taxes. That is the basis of my proposal and the reason for placing the figure at $50,000,000 for the first or current year's program. This proposal has met with the unanimous approval of the veterans themselves through their organizations. This fact should be borne in mind: Once an adjusted-service certificate is paid, the obligation is ended and the Treasury is relieved of any future charge on that account. There is now in the adjusted-service fund approximately $634,000,000 in United States Government bonds and other interest-bearing obligations, which forms the reserve for the payment of adjusted-service certificates as they become due, either by death claims or maturity. If a proportion of the certificates are paid now, it simply means that the reserve for that portion can be used for immediate cash payment. The drain on the Treasury will be negligible as compared to the amount of good that will be done by putting this money into circulation at the present time, especially in view of the needy circumstances of many of the veterans.

GERMANENESS

The Williamson bill is a consolidation bill which creates a new office and imposes upon the head of the new office certain duties intended to improve the service rendered to veterans by the Government. (See powers under sec. 1 (b) of the bill.)

The bill revises the methods of administering relief for veterans already provided by Congress. My amendment simply provides for one additional change in the method of administration of a relief already granted. It is therefore germane to the whole bill and the purpose of the bill.

A general subject may be amended by individual propositions. (Hinds' Precedents, vol. 5, secs. 5838, 5839.)

Reasons for the rule of germaneness. (Vol. 5, sec. 5860.)

Whether or not an amendment be germane should be judged from the provisions of its text rather than from the purposes which circumstances may suggest. (Vol. 5, secs. 5783, 5803.)

SECTION 5803

On January 15, 1901 (56th Cong., pp. 1052–1054), the rivers and harbors bill (H. R. 13189) was under consideration in the Committee of the Whole House on the state of the Union.

Mr. Frank W. Mondell, of Wyoming, proposed an amendment appropriating a sum of money for the construction of three reservoirs at the headwaters of the Missouri River—

"For the purpose of holding back the flood waters of said stream, with a view of minimizing the formation of bars and shoals and other flood-formed obstructions to navigation, and to aid in the maintenance of an increased depth and uniform flow of water for navigation during the dry season."

Mr. Theodore E. Burton, of Ohio, made the point of order that the amendment was not germane to the bill, since the means proposed could not affect navigation but rather related to the improvement of arid lands.

"The Chair holds that as the amendment is framed it is germane to the subject matter of the bill and to the subject matter over which the Rivers and Harbors Committee has jurisdiction. Now, whether that correctly presents the facts of the case is to be determined on the merits. But as the amendment is presented and read by the Clerk it appears to the Chair that it is entirely proper and germane to the bill, and therefore the Chair will overrule the point of order."

It will be noted that two things are involved here: Germaneness to the subject matter of the bill and germaneness to the subject matter over which the committee which reported the bill has jurisdiction.

The subject matter of the Williamson bill is:

(a) Consolidation of the activities of the Government for the benefit of veterans.

(b) Granting of new powers to the head of a new executive office for the purpose of granting more efficient and expeditious relief to veterans.

Germaneness of my amendment:

Deals with outstanding obligations of the Government to veterans, and its effect would be to consolidate many of these accounts and close them.

(b) It revises a power already vested in the Director of the Veterans' Bureau—part of subject matter of the bill—in order to grant more expeditious relief, and it would also be more efficient relief as it would apply relief first where and when it is most needed.

Therefore germaneness to the bill is established on both points.

Germaneness to the subject matter over which the committee has jurisdiction.

Quoting from the Rules of the House (House Manual, p. 305):

The examination of the accounts and expenditures of the several departments, independent establishments, and commissions of the Government and the manner of keeping same; the economy, justness, and correctness of such expenditures; their conformity with the appropriation laws; the proper application of public moneys; the security of the Government against unjust and extravagant demands; retrenchment; the enforcement of the payment of moneys due to the United States; the economy and accountability of public officers; the abolishment of useless offices shall all be subjects within the jurisdiction of the Committee on Expenditures in the Executive Departments.

The germaneness of the amendment to the subject matter over which the committee has jurisdiction is, therefore, evident from its terms.

Quoting from Hinds' Precedents (vol. 5, sec. 5910):

On January 31, 1899 (3d sess., 55th Cong., p. 1323), the bill (H. R. 11022) for the reorganization of the Army was under consideration in Committee of the Whole House on the state of the Union, and Mr. William Hepburn, of Iowa, offered as a new section or paragraph prescribing frequent target practice by enlisted men and providing for the giving of medals for the best records.

Mr. James Hay, of Virginia, made the point of order that the amendment was not germane to the bill.

After debate the Chairman overruled the point of order.

The amendment:

Insert a new paragraph, as follows:

"That the commanding officers of regiments and companies of Infantry and Cavalry shall strive to secure the greatest possible effi-

ciency in the use of firearms by the enlisted men. To this end there shall be frequent target practice, in which all enlisted men shall participate, and the record of efficiency of every enlisted man shall be preserved and at the end of each year shall be forwarded to the Secretary of War, who shall present to the enlisted man who has the best record in his regiment for excellence in the use of firearms a gold medal, with appropriate inscription, and a silver medal to the enlisted man who has the best record in his company."

The point of order was stated as follows:

Mr. HAY. It provides for a system of merit, and so forth, which is not contemplated in the bill in any way, and, moreover, target practice is now provided for by law, and this is an amendment, so far as I can understand, which is in contradistinction to the existing law. (55th Cong., 3d sess., p. 1324.)

The points of identity between the above case and the present are these:

First. Here is a bill for the reorganization of an entire Government department of function, the same as the present bill.

Second. The amendment is made by adding a new section or paragraph.

Third. The amendment affected something which the executive officers were already required by law to do (hold target practice), but revised the time and manner of doing it.

On one point the amendment in the above case goes much farther than my amendment. Notice that in an Army reorganization bill the Hepburn amendment was held germane when it inaugurated something entirely new—a merit system for marksmanship—and provided for the giving of gold and silver medals to certain soldiers.

My amendment gives nothing new to the veterans. The obligations which it directs shall be paid are valid obligations which are now outstanding against the Government, and each and every one of these obligations must be paid some time or other.

Under the present law this duty rests upon the Director of the Veterans' Bureau to pay the certificates, either upon the death of the veteran to whom issued or upon the date of the maturity stated upon the face of the certificate. My amendment would revise this to require the new director of veterans' affairs, whose office would be created by this bill to take over the duties of the Director of the Veterans' Bureau, to pay these adjusted-service obligations, beginning immediately and in certain specified order.

Therefore you must agree with me that the precedent established by the Hepburn amendment is even broader than is necessary to show the germaneness of my amendment. In fact, the above ruling would go even farther, and permit me to say, by amendment, that the new director should give a gold medal to each veteran of a certain description, if it was desired to do so.

I think it has been conclusively shown that perhaps the major trouble with the Veterans' Bureau is that there are too many clerks drawing salaries out of the money appropriated to take care of the veterans. Therefore if we could figure up what we can reasonably expect to pay for bookkeeping and upkeep of the Veterans' Bureau for the next 10 years and divide that amount up among the veterans now, more than likely they could take that amount of money and take care of themselves better for the rest of their lives than the Government will do by continuing to maintain this expensive establishment or a successor to it. The less bookkeeping and compensation red tape we have the more money will go directly to the veterans and the better off we will all be.

The CHAIRMAN. The Chair is ready to rule. The amendment offered by the gentleman from Michigan would change the law relating to the method of payment and the amount of payment of World War adjusted compensation. If the amendment of the gentleman from Michigan were introduced as a separate bill, the Chair thinks that under the rule it would have to be referred to the Committee on Ways and Means. The committee reporting this bill would have no jurisdiction of it. For that reason, among others, the Chair is of opinion that the amendment is not germane, and sustains the point of order.

Mr. WILLIAMSON. Mr. Chairman, I ask unanimous consent that all debate upon this section and all amendments thereto close in five minutes.

The CHAIRMAN. Is there objection?

Mr. McLEOD. Mr. Chairman, I object. I have an amendment which I want to offer.

Mr. WILLIAMSON. Mr. Chairman, I move that all debate upon this section and all amendments thereto close in five minutes.

The CHAIRMAN. The question is on the motion of the gentleman from South Dakota that all debate upon the section and all amendments thereto close in five minutes.

The motion was agreed to.

Mr. DALLINGER. Mr. Chairman, something has been said here about some agreement on the part of the Committee on Expenditures to the effect that they would not oppose the amendment to strike out subsection (b) of section 1 of the bill, and that they would not ask for a vote to restore it. I am a member of this committee. I know of no such agreement. I was present at no meeting where any such agreement was made.

Mr. SWING. Mr. Chairman, will the gentleman yield?

Mr. DALLINGER. Certainly.

Mr. SWING. The gentleman certainly does not desire to intimate to the House that nothing of the kind took place?

Mr. DALLINGER. Not at all.

Mr. SWING. The gentleman merely desires to say that he was not present.

Mr. DALLINGER. Certainly. I know nothing about it. I say further, for the benefit of the Members of the House, that I consider subsection (b) vital to this bill. This is the first attempt at doing something toward reorganizing the executive departments of the Government. There has been a great deal of talk for years about that. Both of the presidential candidates in the last presidential campaign had much to say about the necessity for reorganizing the executive departments.

Mr. GASQUE. Mr. Chairman, will the gentleman yield?

Mr. DALLINGER. I am sorry, but I have not the time. The late President Harding recommended that this be done in one of his messages, and a special committee of experts was appointed. Subsequently, a joint committee of the House and Senate was appointed to consider the matter. They brought in an elaborate plan of reorganization. The matter never came before the House because just as soon as the report was made public every bureau chief, every department head and Cabinet officer who was affected commenced to lobby against it. In a faint way we have had the same situation in regard to this bill, which proposes to consolidate into one activity three separate activities which deal with veterans' affairs, and although the President desired this legislation the Secretary of the Interior and the Commissioner of Pensions appeared before the committee to oppose it.

Mr. BURTNESS. Mr. Chairman, will the gentleman yield?

Mr. DALLINGER. I am sorry but I have not the time. It is the same experience that we had when we tried to put through a general plan for reorganization. Mr. Chairman, this committee, which has been unfairly criticized by the gentleman from Virginia [Mr. MOORE], has been working on this question of reorganizing the executive departments of the Government, and it now brings in one measure which deals with veterans' affairs, involving the expenditure of one quarter of our entire budget. This bill should meet with favorable consideration, and I trust that when the request is made for a separate vote on the amendment which struck out subsection (b) of section 1, the Members will vote down that amendment, and pass the bill. [Applause.]

Mr. McLEOD. Mr. Chairman, I offer the following amendment, which I send to the desk.

The Clerk read as follows:

Amendment offered by Mr. McLEOD: Page 7, line 10, add a new section, as follows:

"SEC. 8. The director of veterans' affairs is hereby authorized and directed to continue and expand the present employment service for veterans conducted by the Director of the Veterans' Bureau and he shall be authorized to expend for this purpose any unexpended portions of appropriations for the administration of veterans' affairs, for whatever purpose they may have been appropriated."

Mr. WILLIAMSON. Mr. Chairman, I make the point of order that the amendment is not germane to section 7 or to any part of the bill. It is very clear that it is not. This bill does not seek to change substantive law at all. All we do is to bring these three activities together and put them under one head. We are not dealing with the problems of the Veterans' Bureau or the Pension Bureau. We leave the law as it is. The amendment proposed seeks to amend the law in a manner which would not even be within the jurisdiction of the Committee on Expenditures.

The CHAIRMAN. Does the gentleman from Michigan desire to be heard on the point of order?

Mr. McLEOD. For just a moment. I read from the 1929 report of the United States Veterans' Bureau. The gentleman suggested that the existing law now provided for the thing that this amendment takes care of. I read from the report:

The director has also publicly proposed that consideration be given to the adoption of a new policy of making actual need an important factor in the awarding of benefits.

That can not be done under existing law.

Mr. WILLIAMSON. If the gentleman had read the report thoroughly he would have seen that that statement has no reference to the bill.

The CHAIRMAN. The Chair is ready to rule. The amendment offered by the gentleman from Michigan would change the substantive law. The bill before the committee simply provides for changes in the administrative department and does not provide for changing the substantive law. The Chair therefore is of the opinion that the amendment is not germane, and sustains the point of order.

Under the rule, the reading of the bill having been completed and no further amendments being offered, the committee automatically rises and reports the bill to the House with sundry amendments adopted by the committee.

Thereupon the committee rose; and the Speaker having resumed the chair, Mr. HALE, Chairman of the Committee of the Whole House on the state of the Union, having under consideration the bill (H. R. 10630) to authorize the President to consolidate and coordinate governmental activities affecting war veterans, reported that that committee had directed him to report the same back to the House with sundry amendments adopted by the committee, with the recommendation that the amendments be agreed to and that the bill as amended do pass.

The SPEAKER. Under the rule the previous question is ordered on the amendments. Is a separate vote demanded on any amendment?

Mr. LAGUARDIA. Mr. Speaker, I ask a separate vote on the Gasque amendment, striking out paragraph (b) of section 1.

The SPEAKER. Is a separate vote demanded on any other amendment? If not, the Speaker will submit the other amendments in gross.

Mr. LAGUARDIA. Mr. Speaker, a parliamentary inquiry.

The SPEAKER. The gentleman will state it.

Mr. LAGUARDIA. It is some time since we had this amendment before us. I understand the Gasque amendment strikes out paragraph (b) of section 1. If the amendment is voted down, the paragraph remains in the bill, and if the amendment is sustained the paragraph goes out of the bill?

The SPEAKER. Yes. The question now is on agreeing to the other amendments.

The other amendments were agreed to.

The SPEAKER. The question now is on the Gasque amendment. The Clerk will report it.

The Clerk read as follows:

Strike out all of subsection (b) of section 1.

Mr. STAFFORD. Mr. Speaker, does an affirmative vote mean the retention of the paragraph in the bill?

The SPEAKER. No. The Chair was not present at the time the amendment was offered. He understands that the amendment is to strike out the paragraph. A vote "yea" means to strike out the paragraph; a vote "nay" means to leave it in. The question is on agreeing to the amendment.

The question was taken, and the amendment was rejected.

Mr. GASQUE. Mr. Speaker, I ask for a division.

The SPEAKER. The gentleman is too late. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

Mr. KNUTSON. Mr. Speaker, I offer a motion to recommit.

The SPEAKER. Is the gentleman opposed to the bill?

Mr. KNUTSON. I am opposed to the bill.

The SPEAKER. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. KNUTSON moves to recommit the bill to the Committee on Expenditures in the Executive Departments, with instructions to the committee to report the same back forthwith, with the following amendment: Strike out the enacting clause.

The SPEAKER. The question is on agreeing to the motion to recommit.

The question was taken, and the motion was rejected.

The SPEAKER. The question is on the passage of the bill.

Mr. GASQUE. Mr. Speaker, I ask for a division.

The SPEAKER. A division is demanded.

The House divided; and there were—ayes 190, noes, 61.

So the bill was passed.

On motion of Mr. WILLIAMSON, a motion to reconsider the vote whereby the bill was passed was laid on the table.

LEAVE OF ABSENCE

By unanimous consent, Mr. EVANS of Montana, at the request of Mr. LEAVITT, was granted leave of absence, for three days, on account of an official visit to the Naval Academy.

PERMISSION TO ADDRESS THE HOUSE

Mr. LETTS. Mr. Speaker, I ask unanimous consent that on Thursday of next week, after the disposition of bills on the Speaker's table, I may be permitted to address the House for 20 minutes on the subject of Mother's Day.

The SPEAKER. Is there objection?

Mr. SNELL. Reserving the right to object, it is very uncertain what business will be before the House next week, and it will be necessary to object to any special request until we get the tariff and two or three other important matters out of the way. For that reason I shall have to object.

Mr. LETTS. Will the gentleman withhold his objection?

Mr. SNELL. I will reserve the right to object.

Mr. LETTS. I have been requested to make an address on Mother's Day. Mother's Day is the Sunday following. I would like to have proper time for that.

Mr. DYER. I do not think the gentleman from New York [Mr. SNELL] should object.

Mr. SNELL. If we get our regular work out of the way, I shall not object. Until the work is out of the way I must object. The gentleman can get in during the middle of next week if the regular business is finished.

The SPEAKER. Is there objection?

Mr. SNELL. I object, Mr. Speaker.

EXCURSION TO THE GRAND CAVERNS

Mr. GARBER of Virginia. Mr. Speaker, I ask unanimous consent to address the House for one minute.

The SPEAKER. Without objection, it is so ordered.

There was no objection.

Mr. GARBER of Virginia. Mr. Speaker, I have been asked several times about the excursion on May 4 to the Grand Caverns, in Virginia. I wish to say that this is a special congressional train, and all Members may go. They may take members of their families; they may take their secretaries, and, those for whom it is proper, may take their sweethearts. The train leaves Union Station at 8 o'clock Sunday morning. It will reach the Grand Caverns, in the Shenandoah Valley, at 12.30. Luncheon will be served there and you will then be conducted through the matchless caverns, a veritable wonderland of beauty and charm; and at 3.30 the train will leave for the eastern side of the Blue Ridge, at Charlottesville. There you will be taken to see Monticello, the famous home of Thomas Jefferson. Also, I understand, you will be given an opportunity to visit the University of Virginia. Dinner will be served in the evening, and the train will return to Washington at 10.55.

Please understand that while it is a special congressional train, you may take the members of your family and your secretaries, but it will not be a train for the general public.

The management of the excursion must know by 10 o'clock to-morrow morning whether you are going. They have asked me to ask you to telephone National 6176, giving the number in your party.

The trip will cost $5, a special excursion rate. I notice the folder says "plus charge for Pullman accommodations." I am not authorized to say what charge that will be. The round trip is $5, and that will include luncheon and dinner in the evening and the trip through the caverns and a trip to Monticello, as well as a trip to the grounds of the University of Virginia.

The Members who think that Virginia just extends along the swamps down on the western side of the Potomac River and along Chesapeake Bay should come down and see Virginia at her best in the beauty and glory of the Shenandoah Valley and the Piedmont Valley. [Applause.]

Mr. CLARK of Maryland. May we take our children with us?

Mr. GARBER of Virginia. Yes; I understand any member of the family can go on this excursion.

MY RECORD IN CONGRESS

Mr. ABERNETHY. Mr. Speaker, I ask unanimous consent to extend my remarks in the RECORD.

The SPEAKER. The gentleman from North Carolina [Mr. ABERNETHY] asks unanimous consent to extend his remarks in the RECORD. Without objection, it is so ordered.

There was no objection.

Mr. ABERNETHY. Mr. Speaker, the permission given me by the unanimous consent of the House enables me to give to the people of my district, in a brief way, my record while I have been a Member of Congress.

Since I first came to Congress, I have striven to respond promptly to every reasonable request made of me by my constituents, making it a rule to promptly answer all letters and inquiries, and whenever possible to try to carry out their wishes. This has necessarily increased my work, but I have always felt that my first duty was to the people of my district. The people who have been served by me are the best witnesses as to whether or not my services as a Member of Congress have been satisfactory, and it is for them to say whether I shall continue to serve them. While I have felt that my primary duty was to the people of my district, I have tried faithfully to serve my State and Nation, and to measure up to the high ideals of a national representative.

Ever since I have been in Congress the Republican Party has had control of the Executive and both branches of Congress, and while this has handicapped my effort greatly, yet I have given constant attention to my duties in the Congress and before the committees and in the various departments and in services rendered my constituents, and they are the best judges of how successful I have been.

I am sure the ex-service men will verify the statement when I say that I have been vigilant in season and out of season to advance their interests. The greatest tragedy of all times was the World War. It left behind many heartaches, many sorrows, many "vacant chairs" in the homes, and many human wrecks and disabled men who participated in it in defense of the American flag. I have always felt that our country owed these brave boys and their dependents every consideration, and I have worked for and voted for every measure in Congress to take care of these boys and their dependents in a most liberal way. The many thousands of veteran cases I have handled from time to time have been a pleasure to me, as I have felt that this part of my work was "a labor of love." I have been helpful in every way possible for the veterans of the Spanish-American War.

The waterway development brought about in North Carolina, and particularly in my district, has been most gratifying. Liberal appropriations have been spent in waterway improvements, and I am giving the amounts spent in North Carolina for river and harbor improvement for the various years. These improvements have been secured in conjunction with the other members of the delegation. I have always worked for and voted for these improvements, and the Congress and the Government have been liberal to our State in this particular. These improvements are just the beginning of the opening up of our ports and the full utilization of our waterways for the progress of our great State. These figures given are for the whole State, for there is such a tying together of these various improvements that to get the full picture the various amounts spent in North Carolina should be considered. The table following shows these amounts during the fiscal years 1922 to 1929:

Statement showing allotments to river and harbor projects in the State of North Carolina during the fiscal years 1922 to 1929

	1922	1923	1924	1925	1926	1927	1928	1929
Inland waterway from Norfolk, Va., to Beaufort Inlet, N. C	$240,000	$400,000	$371,500	$447,000	$755,000	$625,000	$710,000	$842,500
Meherrin River, N. C		2,000	2,500	3,000		2,700	3,000	2,000
Roanoke River, N. C			2,500	3,000		2,700	4,951	3,000
Scuppernong River, N. C	15,000			14,627		2,700	3,000	2,500
Manteo (Shallowbag) Bay, N. C			5,000	2,000				10,000
Waterway connecting Swan Quarter Bay with Deep Bay, N. C						2,500		
Pamlico and Tar Rivers, N. C	21,400	12,000		18,250	10,200	16,500	21,974	45,000
Neuse River, N. C	12,000	12,000	9,000	18,250	10,200	6,500	49,106	
Contentnea Creek, N. C	1,600		1,000		1,200	1,500		800
Trent River, N. C	2,500		4,000	2,500	800	750	3,577	1,200
Channel connecting Thoroughfare Bay with Cedar Bay, N. C				5,000				4,000
Beaufort Harbor, N. C	24,000	16,500	7,500	16,250	17,500	9,200	156,840	10,500
Waterway connecting Core Sound and Beaufort Harbor, N. C	2,500	30,000	3,500	7,100	4,000		5,102	
Inland waterway, Beaufort to Cape Fear River, N. C	20,000	10,187		11,650			790,499	655,000
Morehead City Harbor, N. C			5,000			5,000		
Beaufort Inlet, N. C				500		65,870	26,249	28,000
Harbor of Refuge, Cape Lookout, N. C						3,000		
Swift Creek, N. C	800				800			
Cape Fear River, N. C., at and below Wilmington	250,000	200,000	430,000	329,400	245,000	171,000	184,000	150,000
Cape Fear River, N. C., above Wilmington	15,000	12,000	40,000	9,500	6,000	12,000	28,798	
Northeast (Cape Fear) River, N. C	3,000	3,000	8,500	4,000	2,000	4,000		
Black River, N. C	2,000	2,000	7,500	3,000	1,600	1,100		1,000
Shallotte River, N. C							11,444	
Waccamaw River, N. C. and S. C		10,000	3,000	8,500		3,600	2,000	1,000
Mackay Creek, N. C								1,800
Operating and care of inland waterway from Norfolk, Va., to Beaufort Inlet, N. C	28,500	40,000	32,700	47,500	49,500	45,515	52,500	84,000
Operating and care of locks and dams on Cape Fear River, N. C	13,600	10,500	3,000	22,000	2,500	7,000	11,000	7,500
Total	651,900	760,187	936,200	973,027	1,106,300	988,135	2,064,040	1,849,800

The waterway projects as they affect my district authorized in the pending river and harbor bill which passed the House a short while ago are as follows:

Project for dredging Gallants Channel from Beaufort to the junction with the inland waterway and the Bulkhead Channel from Beaufort to deep water inside of Beaufort Inlet to a depth of 12 feet at mean low water and a width of 100 feet, and the dredging of the channel in front of Beaufort to a depth of 12 feet at mean low water, with widths varying from 200 to 400 feet, $55,000.

Morehead City Harbor, in accordance with House Document No. 105, Seventieth Congress, to provide for a channel 12 feet deep and 100 feet wide from deep water in Beaufort Outer Harbor to Sixth Street, Morehead City, thence 200 to 400 feet wide to Tenth Street, and for a channel 6 feet deep and 75 feet wide connecting the western end of the harbor with Bogue Sound.

There will also be authorized in the bill the following surveys looking to the improvement of the following streams:

Mill Creek at Pollocksville, N. C.

Alligator Creek, N. C., and channel connecting said creek with the inland waterway.

Neuse River, N. C., from the wharves at New Bern to Goldsboro, N. C., with a view to providing a depth of 8 feet, with suitable width.

Channel from Core Sound to Ocracoke Inlet, N. C., by way of Wainright Channel or some other inside passage.

Channel from Beaufort Inlet, N. C., via the inland waterway and Neuse River to New Bern with a view to securing a depth of 20 feet, with suitable width.

Inland waterway from Beaufort to Jacksonville, N. C., leading from Craigs Point and via Salliers Bay, Howard Bay, and New River.

Channel from Pamlico Sound near the mouth of Neuse River to Beaufort, N. C., via Swan Point, Cedar Island Bay, Thoroughfare Cut, Thoroughfare Bay, Core Sound, touching at Atlantic Wharves, and to run through Mill Point Shoal, by Sealevel, across to Piney Point, and touching the wharves of the various communities through the straits and Taylors Creek Cut, with a view of securing a depth of 7 feet, with suitable width.

Northeast River, N. C.

Waterway connecting Core Sound and Beaufort Harbor, N. C.

I have had pending before the Board of Engineers for Rivers and Harbors the question of a 30-foot channel at Beaufort Inlet, and also the question of the further improvement and completion of the harbor of refuge at Cape Lookout.

I was also interested in the project which was adopted in the rivers and harbors bill in regard to the inland waterway from Norfolk, Va., to Beaufort Inlet, N. C., in accordance with report submitted in Senate Document No. 23, Seventy-first Congress, first session, for a tidal lock in the Albemarle and Chesapeake Canal at or near Great Bridge, Va., at a limit of cost, however, of not to exceed $500,000, conditioned upon contributions from local interests in the amount of $100,000.

As to the development of a great port at Beaufort Inlet I have been working on this matter for a number of years. This development would mean much to the State of North Carolina. There should, and I believe, will be a great port in the future at Beaufort and Morehead City with a 30-foot channel with great shipping lines connecting with foreign ports and with the various ports of the United States. There will be in the future a great port at Cape Lookout. I expect also a great port at Wilmington with a 30-foot channel to the sea. I have been

working for all these waterway and port developments which mean so much to our great State.

Since my tenure in office many important matters have been considered by the Congress, and my voting record in the House is open to all the people for inspection; and any of my constituents who are so minded can secure the information as to how I have stood on all important questions affecting the American people, and particularly the people of my district and my State.

The great problems confronting North Carolina at the present are cheap transportation and the question of taxation and farm relief.

Our waterway development and the building of many miles of hard surface and dependable highways has aided very materially in lessening the costs of transportation so vital to the people. The Government has spent millions in the development of waterways and harbor improvements for our State. Our people must utilize these waterways and harbors more in the future if they expect to get the fullest benefits from these improvements. The Government has spent in conjunction with the State many millions for road improvements.

While the question of taxation of land and personal property has been a matter to be regulated by the legislature, yet I think I have worked out a plan whereby I can get aid for the various counties of the State by a bill which I have introduced in Congress whereby I provide for the return of one-half of the tobacco taxes collected by the Government to the various States to be used for roads and schools. I have mailed to my constituents a copy of this bill and the speech I made in Congress concerning it, and the matter is fully explained therein. The securing of the passage of this bill means a long and hard fight, which I do not mind if the results can be accomplished. The passage of this bill would solve the tax problem in North Carolina.

Ever since I have been a Member of Congress I have worked for and voted for every farm relief measure offered which had for its purpose the benefit of the farmer. The farmer's problems are many and varied. It has always been my aim and purpose in the past to help work them out. I have earnestly striven to do so. I shall continue to work to this end.

I feel that I have been of benefit to the many truck growers and shippers in my district in aiding them in working out better railroad schedules and in their fight for express refrigeration service. I have worked with the Interstate Commerce Commission and with others in bringing about better conditions. Those who have received the benefits know what has been done.

A reading of the items set forth in the indexes of the CONGRESSIONAL RECORD herein printed gives to my constituents a general idea of the legislation in which I have been interested. The establishment of Moores Creek National Military Park, the securing of the Fort Macon Military Reservation to the State without cost, the passage of the bill for the erection of the monument to Vice President William Rufus King at Clinton, his birthplace, these and many other activities too numerous to mention, give to my constituents some idea of my services in Congress. The establishment of many rural mail services and extensions secured by my efforts have been of benefit to the people. The additions to the Federal building at Goldsboro and the securing of a new Federal building at New Bern, soon to be erected, and improved quarters for post offices in the various towns of my district have engaged my most serious attention and efforts.

It is impossible for me to recount in this speech the various activities in which I have been engaged in my congressional capacity.

I take this opportunity, in view of my inability to visit the various communities of my district, to bring to the attention of my constituents that I expect to be a candidate for renomination in the primaries on June 7, 1930. We have been in constant session here in Congress to such an extent that I could not leave Washington to canvass my district on account of my official duties here.

Suffice it to say that I am relying upon my record for a continuation of my tenure in office, fully believing that my constituents will not only renominate me on June 7 but will reelect me in November.

The work of a Member of Congress which is recorded in the CONGRESSIONAL RECORD is but a small part of his record. The major portion of his work has to do with the various departments and activities of the Government, but I feel that it will be of interest to give to my constituents a brief résumé of my work, as can be found by reference to the indexes of the CONGRESSIONAL RECORD, as follows:

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Beaufort, N. C.: for examination and survey of certain channels in inland waterway at (see bill H. R. 7704), 3741.
——— to erect public building at (see bill H. R. 5347), 911.
Clinton, N. C.: to erect public building at (see bill H. R. 5342), 911.
Clubfoot Creek, N. C.: for examination and survey of (see bill H. R. 4577), 571.
Drafts, checks, notes, and conveyances: to repeal stamp tax on (see bill H. R. 4094), 476.
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Fort Macon Military Reservation: granting to State of North Carolina (see bill H. R. 7145), 2868.
Goldsboro, N. C.: to enlarge public building at (see bill H. R. 5345), 911.
King, William Rufus: to erect monument to (see bill H. R. 8544), 5992.
Mill Cut, N. C.: for examination and survey of (see bill H. R. 4577), 571.
Morehead City, N. C.: for examination and survey of harbor in (see bill H. R. 4402), 482.
——— to erect public building at (see bill H. R. 6075), 1358.
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PILGRIMAGE OF WIDOWS AND MOTHERS OF DECEASED SOLDIERS TO CEMETERIES OF EUROPE—CONFERENCE REPORT

Mr. RANSLEY, of the Committee on Military Affairs, presented the conference report on the bill (H. R. 4138) to amend the act of March 2, 1929, entitled "An act to enable the mothers and widows of the deceased soldiers, sailors, and marines of the American forces now interred in the cemeteries of Europe to make a pilgrimage to these cemeteries," for printing.

PERMISSION TO ADDRESS THE HOUSE

Mr. JONES of Texas. Mr. Speaker, I ask unanimous consent that on to-morrow, following the address of the gentleman from Iowa [Mr. RAMSEYER] I be permitted to address the House for 30 minutes.

The SPEAKER. The gentleman from Texas [Mr. JONES] asks unanimous consent that following the address of the gentleman from Iowa [Mr. RAMSEYER] he may address the House for 30 minutes. Is there objection?

Mr. SNELL. Reserving the right to object, it is understood that this request is under the same restriction as the request of the gentleman from Iowa [Mr. RAMSEYER].

Mr. JONES of Texas. Yes.

There was no objection.

Mr. JOHNSON of Washington. Mr. Speaker, I ask unanimous consent that following the address of the gentleman from Texas [Mr. JONES] I be permitted to address the House for 15 minutes, under the same conditions.

The SPEAKER. The gentleman from Washington [Mr. JOHNSON] asks unanimous consent that on to-morrow, following the address of the gentleman from Texas [Mr. JONES], he may address the House for 15 minutes. Is there objection?

Mr. SNELL. Reserving the right to object, it is understood that it is all under the condition that Calendar Wednesday business is out of the way?

Mr. JOHNSON of Washington. Yes.

There was no objection.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and under the rule referred as follows:

S. 4182. An act granting the consent of Congress to the county of Georgetown, S. C., to construct, maintain, and operate a bridge across the Pee Dee River and a bridge across the Waccamaw River, both at or near Georgetown, S. C.; to the Committee on Interstate and Foreign Commerce.

ENROLLED BILLS SIGNED

Mr. CAMPBELL of Pennsylvania, from the Committee on Enrolled Bills, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H. R. 7356. An act for the relief of the American Foreign Trade Corporation and Fils d'Aslan Fresco.

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 3441. An act to effect the consolidation of the Turkey Thicket Playground, Recreation, and Athletic Field.

BILL PRESENTED TO THE PRESIDENT

Mr. CAMPBELL, from the Committee on Enrolled Bills, reported that that committee did on this day present to the President, for his approval, a bill of the House of the following title:

H. R. 10379. An act to amend the act entitled "An act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes," approved July 11, 1916, as amended and supplemented, and for other purposes.

ADJOURNMENT

Mr. WILLIAMSON. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 3 o'clock and 30 minutes p. m.) the House adjourned until to-morrow, Wednesday, April 30, 1930, at 12 o'clock noon.

COMMITTEE HEARINGS

Mr. TILSON submitted the following tentative list of committee hearings scheduled for Wednesday, April 30, 1930, as reported to the floor leader by clerks of the several committees:

COMMITTEE ON EDUCATION

(10.30 a. m.)

To aid in effectuating the purposes of the Federal laws for promotion of vocational agriculture (S. 2113).

COMMITTEE ON PUBLIC BUILDINGS AND GROUNDS

(10 a. m.)

To establish a commercial airport for the District of Columbia (S. 3801).

COMMITTEE ON BANKING AND CURRENCY

(10.30 a. m.)

To consider branch, chain, and group banking as provided in House Resolution 141.

COMMITTEE ON AGRICULTURE

(10 a. m.)

To authorize the Secretary of Agriculture to carry out his 10-year cooperative program for the eradication, suppression, or bringing under control of predatory and other wild animals injurious to agriculture, horticulture, forestry, animal husbandry, wild game, and other interests, and for the suppression of rabies and tularemia in predatory or other wild animals (H. R. 9599).

COMMITTEE ON FLOOD CONTROL

(10.30 a. m.)

To establish a reservoir system of flood control on the tributaries of the Mississippi River (H. R. 9376).

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of Rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

430. A letter from the Acting Secretary of War, transmitting report from the Chief of Engineers on preliminary examination and survey of Willamette River, Oreg., between Portland and Salem (H. Doc. No. 372); to the Committee on Rivers and Harbors and ordered to be printed, with illustrations.

431. A letter from the Acting Secretary of War, transmitting report from the Chief of Engineers on the Fox River, Wis. and Ill., covering navigation, flood control, power development, and irrigation; to the Committee on Rivers and Harbors.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mr. JOHNSON of Washington: Committee on Immigration and Naturalization. H. R. 9673. A bill to authorize the refund of visa fees in certain cases; without amendment (Rept. No. 1333). Referred to the Committee of the Whole House on the state of the Union.

Mr. MAAS: Committee on Foreign Affairs. H. R. 11580. A bill to amend section 1709 of the Revised Statutes, as amended by the act of March 3, 1911 (36 Stat. 1083), and section 304 of the Budget and Accounting Act, 1921 (42 Stat. 24); with amendment (Rept. No. 1334). Referred to the House Calendar.

Mr. LETTS: Committee on Banking and Currency. H. R. 9433. A bill to amend the Federal farm loan act, and for other purposes; with amendment (Rept. No. 1335). Referred to the House Calendar.

Mr. LEHLBACH: Committee on the Merchant Marine and Fisheries. S. 3249. An act to amend section 4578 of the Revised Statutes of the United States respecting compensation of vessels for transporting seamen; with amendment (Rept. No. 1336). Referred to the Committee of the Whole House on the state of the Union.

Mr. HAUGEN: Committee on Agriculture. H. R. 10782. A bill to facilitate and simplify the work of the Forest Service; with amendment (Rept. No. 1338). Referred to the Committee of the Whole House on the state of the Union.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS

Under clause 2 of Rule XIII,

Mrs. LANGLEY: Committee on Claims. H. R. 1889. A bill for the relief of Roland Zolesky; with amendment (Rept. No. 1330). Referred to the Committee of the Whole House.

Mr. JOHNSTON of Missouri: Committee on Claims. H. R. 9659. A bill for the relief of H. F. Frick and others; with amendment (Rept. No. 1331). Referred to the Committee of the Whole House.

Mr. IRWIN: Committee on Claims. H. R. 10608. A bill for the relief of R. W. Selvidge; with amendment (Rept. No 1332). Referred to the Committee of the Whole House.

CHANGE OF REFERENCE

Under clause 2 of Rule XXII, committees were discharged from the consideration of the following bills, which were referred as follows:

A bill (H. R. 10688) for the relief of Bertha Hymes Sternfeld; Committee on World War Veterans' Legislation discharged, and referred to the Committee on War Claims.

A bill (H. R. 11161) granting a pension to Hinman E. Ingerson; Committee on Pensions discharged, and referred to the Committee on Invalid Pensions.

PUBLIC BILLS AND RESOLUTIONS

Under clause 3 of Rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. FREEMAN: A bill (H. R. 12010) to advance on the retired list to the grade temporarily held in time of war any officer of the Coast Guard who has been retired because of physical disability originating in line of duty in time of war; to the Committee on Interstate and Foreign Commerce.

By Mr. JONES of Texas: A bill (H. R. 12011) to provide for standard methods of grading and valuing cottonseed, and for other purposes; to the Committee on Agriculture.

By Mr. MAPES: A bill (H. R. 12012) to require a contractor to whom is awarded any contract for public buildings or other public works, or for repairs or improvements thereon, in the District of Columbia to give bond for the faithful performance of the contract, for the protection of persons furnishing labor and materials, and for other purposes; to the Committee on the District of Columbia.

By Mr. NELSON of Wisconsin: A bill (H. R. 12013) to revise and equalize the rate of pension to certain soldiers, sailors, and marines of the Civil War, to certain widows, former widows of such soldiers, sailors, and marines, and granting pensions and increase of pensions in certain cases; to the Committee on Invalid Pensions.

By Mr. WOOD: A bill (H. R. 12014) to permit payments for the operation of motor cycles and automobiles used for necessary travel on official business on a mileage basis in lieu of actual operating expenses; to the Committee on Expenditures in the Executive Departments.

By Mr. BEERS: Joint resolution (H. J. Res. 319) to provide for the printing with illustrations and binding in cloth of 62,000 copies of the Special Report on the Diseases of the Horse; to the Committee on Printing.

By Mr. STEVENSON: Joint resolution (H. J. Res. 320) authorizing an appropriation of $25,000 to assist in the construction of a highway leading to the Kings Mountain battle field, South Carolina; to the Committee on Roads.

PRIVATE BILLS AND RESOLUTIONS

Under clause 1 of Rule XXII, private bills and resolutions were introduced and severally referred as follows:

By Mr. CLARKE of New York: A bill (H. R. 12015) granting an increase of pension to Malvina H. Perry; to the Committee on Invalid Pensions.

By Mr. COCHRAN of Missouri: A bill (H. R. 12016) granting an increase of pension to Philip Winckler; to the Committee on Pensions.

By Mr. DENISON: A bill (H. R. 12017) granting a pension to Bessie Sneed; to the Committee on Invalid Pensions.

By Mr. ESTERLY: A bill (H. R. 12018) granting a pension to John W. Strausser; to the Committee on Pensions.

By Mr. GOLDER: A bill (H. R. 12019) to carry out the findings of the Court of Claims in the case of William Zeiss, administrator of William B. Reaney, survivor of Thomas Reaney, and Samuel Archbold; to the Committee on Claims.

By Mr. GOLDSBOROUGH: A bill (H. R. 12020) for the relief of Zedic N. Draper; to the Committee on Military Affairs.

By Mr. HANCOCK: A bill (H. R. 12021) to authorize the appointment and retirement of Evelyn Briggs Baldwin in the grade of captain in the Navy in recognition of his patriotic and scientific services, and for other purposes; to the Committee on Naval Affairs.

By Mr. LINTHICUM: A bill (H. R. 12022) for the relief of Southern Overall Co.; to the Committee on Claims.

By Mr. NELSON of Wisconsin: A bill (H. R. 12023) to repeal the provision of law granting a pension to Lois Cramton; to the Committee on Invalid Pensions.

By Mr. SHOTT of West Virginia: A bill (H. R. 12024) granting a pension to Isaac Ramey; to the Committee on Invalid Pensions.

Also, a bill (H. R. 12025) granting a pension to Sarah Frasher; to the Committee on Invalid Pensions.

Also, a bill (H. R. 12026) granting a pension to Araminta Webb; to the Committee on Invalid Pensions.

By Mr. VINCENT of Michigan: A bill (H. R. 12027) granting an increase of pension to Belinda Kanzig; to the Committee on Invalid Pensions.

By Mr. YON: A bill (H. R. 12028) for the relief of St. Luke's Episcopal Church, Marianna, Fla.; to the Committee on Claims.

By Mr. ZIHLMAN: A bill (H. R. 12029) granting a pension to Clarence D. Hanks; to the Committee on Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

7155. By Mr. BLOOM: Petition of citizens of Cincinnati, Ohio, opposing the calling of an international conference by the President of the United States, or the acceptance by him of an invitation to participate in such a conference, for the purpose of revising the present calendar, unless a proviso be attached thereto, definitely guaranteeing the preservation of the continuity of the weekly cycle without the insertion of the blank days; to the Committee on Foreign Affairs.

7156. By Mr. GARBER of Oklahoma: Petition of Rock Island Lines, Carnegie, Okla., in support of House bill 10343; to the Committee on Immigration and Naturalization.

7157. Also, petition of Pearl E. Hughey, postmaster at Cleo Springs, Okla., urging that House bill 229 be made effective as of July 1, 1930, instead of July 1, 1931; to the Committee on the Post Office and Post Roads.

7158. Also, petition of Alaska Native Brotherhood, re conditions of natives of southeast Alaska; to the Committee on Indian Affairs.

7159. Also, petition of Southern Pine Association, New Orleans, La., in support of tariff on lumber, etc.; to the Committee on Ways and Means.

7160. Also, petition of Izaak Walton League of America, in support of Senate bill 2498 and House bill 6981; to the Committee on the Public Lands.

7161. By Mr. HICKEY: Petition of the Winona Lake Literary Club urging passage of a law for the Federal supervision of motion pictures; to the Committee on Interstate and Foreign Commerce.

7162. By Mr. HILL of Washington: Petition of Mrs. William Bergen and 64 other citizens of Spokane, Wash., urging passage of the Capper-Robsion school bill, H. R. 10; to the Committee on Education.

7163. By Mr. MANLOVE: Petition of James H. Ford and 165 other citizens of Stockton, Calif., urging Congress to speedily pass the Manlove bill, H. R. 8976, for the relief of veterans and widows and minor orphan children of veterans of Indian wars; to the Committee on Pensions.

7164. By Mr. O'CONNELL of New York: Petition of the American Bandmasters' Association (Inc.), Chicago, Ill., favoring the passage of House bill 10677, granting commissioned rank to Army bandmasters; to the Committee on Military Affairs.

7165. By Mr. VESTAL: Petition of residents of Delaware County, Ind., urging the passage of House bill 2562, granting an increase of pension to Spanish-American War veterans and widows of veterans; to the Committee on Pensions.

7166. By Mr. WOLVERTON of West Virginia: Petition of Henry R. Gay, mayor, and others, of Buckhannon, Upshur County, W. Va., urging Congress to press committee in conference on Senate bill 15, civil service retirement act, and to report same for favorable action by Congress, before adjournment of the present session; to the Committee on the Civil Service.